CLERK'S COPY

Vol. I

175244
S.C.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 15

WAIALUA AGRICULTURAL COMPANY, LIMITED, PETITIONER,

vs.

ELIZA R. P. CHRISTIAN, AN INCOMPETENT PERSON, BY HERMAN V. VON HOLT, HER GUARDIAN, ET AL.

No. 17

ELIZA R. P. CHRISTIAN, AN INCOMPETENT PERSON, BY HERMAN V. VON HOLT, HER GUARDIAN, PETITIONER,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { MARCH 30, 1938.
MARCH 31, 1938.

CERTIORARI GRANTED MAY 2, 1938.

No. 8329

United States

Circuit Court of Appeals

For the Ninth Circuit.

ELIZA R. P. CHRISTIAN, an incompetent person by HERMAN V. VON HOLT, her guardian,

Appellant,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED, an Hawaiian corporation, JAMES L. HOLT, and ANNIE HOLT KENTWELL,

Appellees.

WAIALUA AGRICULTURAL COMPANY, LIMITED, an Hawaiian corporation,

Cross-Appellant,

vs.

ELIZA R. P. CHRISTIAN, an Incompetent person, by HERMAN V. VON HOLT, her guardian, JAMES L. HOLT and ANNIE HOLT KENTWELL,

Cross-Apellees.

Transcript of Record

In Three Volumes

VOLUME I

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Upon Appeal and Cross-Appeal From the Supreme Court of the Territory of Hawaii.

Parker Printing Company, 545 Sansome Street, San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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—cross 1299

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—cross 1290

Parker, Mrs. Ann
—direct 1336
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Petersen, Mrs. Fred
—direct 1348
—cross 1348

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—cross 1282

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Eq. No. 2915

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii.

At Chambers In Equity

Bill for Cancellation, Accounting and
Incidental Relief.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN VON HOLT (substituted for GEORGE H. HOLT, deceased), her Guardian,

Petitioner,

vs.

WAIALUA AGRICULTURAL COMPANY, PANY, LIMITED, an Hawaiian corporation, and JAMES L. HOLT,

Respondents.

NOTICE OF APPEAL AND APPEAL.

Filed at 9:40 o'clock A. M. Oct. 19, 1929. (s) D. K. Sherwood. No. 1920.

Rec'd and filed in the Supreme Court October 31, 1929, at 1:29 P. M. (s) J. A. Thompson, Clerk. [1*]

Now comes WAIALUA AGRICULTURAL COMPANY, LIMITED, respondent in the above entitled case, and gives notice of appeal and hereby appeals to the Supreme Cour of the Territory of Hawaii from the decree made and entered in the

*Page numbering appearing at the foot of page of original certified Transcript of Record.

above entitled court and cause on the 16th day of October, 1929.

Dated at Honolulu, T. H. this 19th day of October, 1929.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
By ROBERTSON & CASTLE
Its Attorneys.

Service of a copy of the foregoing notice of appeal and appeal is hereby admitted this 19th day of October, 1929.

ULRICH & HITE
Attorneys for Petitioner.
JOHN R. DESHA
Attorney for Respondent,
James L. Holt. [2]

[Title of Court and Cause.]

PETITION

EXHIBITS "A", "B", "C", "D", and "E"

and

CHAMBERS SUMMONS.

Filed at 10:25 o'clock a. m, May 9, 1928. Sibyl Davis, Clerk.

Returned at 1:50 o'clock p. m. May 9, 1928. A. E. Restarick, Clerk. [3]

[Title of Court and Cause.]

PETITION.

Comes now GEORGE H. HOLT as Guardian of the Estate of ELIZA R. P. CHRISTIAN, an incompetent person, by his attorneys, ULRICH & HITE, and as grounds for the relief herein prayed, shows unto this Honorable Court as follows:

I.

That he, the said George H. Holt, was upon the first day of February, 1927, by order and decree duly entered in the above entitled Court, appointed Guardian in Hawaii of the estate of Eliza R. P. Christian, resident in England, and found and adjudged to be an incompetent person, and that upon the filing of a bond in the amount of $15,000.00, he, the said George H. Holt, did qualify as such Guardian and ever since has been and now is the duly acting and qualified guardian of said incompetent person.

II.

That respondent, Waialua Agricultural Company, Limited is now and at all times hereinafter mentioned has been a cor- [4] poration duly organized and existing under and pursuant to the provisions of the laws of the Territory of Hawaii, with its principal place of business in Honolulu in said Territory.

III.

That the respondent James L. Holt is a resident of the City and County of Honolulu, Territory of

Hawaii, and is a son of James R. Holt and grandson of Robert William Holt, all as more fully hereinafter appears.

IV.

That petitioner, Eliza R. P. Christian, formerly Eliza R. P. Holt, was and is the daughter and sole heir of John Dominis Holt, now deceased, and that the said John Dominis Holt was a son of Robert William Holt, said Robert William Holt having been a resident of the Territory of Hawaii, and the owner of large properties in said Territory, who died in the year 1862.

V.

That upon his death in the year 1862 as aforesaid, said Robert William Holt, seized of considerable properties as aforesaid, left a will wherein and whereby, among other things, it was provided that the bulk of his estate should be divided into four equal parts, one part of which to go to and become the property of his daughter, Elizabeth M. Aldrich, the remaining three-quarters thereof to be held in trust to pay the income from equal and undivided thirds thereof to each of his sons, Owen J. Holt, James R. Holt, and John Dominis Holt, for their respective lives, with remainder over in fee as to each [5] undivided one-third to the heirs at law of the said three sons as they respectively should die, a copy of which said last will and testament of Robert William Holt is hereto annexed, marked Exhibit "A", and by reference made a part hereof.

That after the distribution of one-fourth of said estate to said Elizabeth M. Aldrich, daughter of testator, as aforesaid, and after the payment of all debts and specific legacies, there was in said estate and undistributed the following pieces and parcels of real property, situate, lying and being in the district of Waialua, Island of Oahu, Territory of Hawaii, said property being more particularly described as follows:

1. Ahupaa of Paalaa, being apana 34, L.C.A. 7713, Royal Patent 4475, containing an area of 12,237 acres;

2. The lands described in Royal Patent 973 to Robinson et al, containing an area of 1,942 acres;

3. The lands described in Royal Patent 431 to Kanohanui, containing an area of 100 acres;

4. The lands described in Royal Patent 235 to Topliff et al, containing an area of 36 acres;

5. The lands described in Royal Patent 238 to Anderson, containing an area of 25.8 acres;

6. All kuleanas or grants lying within the above described land.

VI.

That under and pursuant to the provisions of said will of Robert William Holt, his son, John Dominis Holt, became and was entitled to the income for life from an undivided one-third of all of the above described lands, and that Eliza R. P. [6] Christian, the only child and sole heir

at law of her father, the said John Dominis Holt, as aforesaid, became and was entitled to accede to and become the owner in fee simple of an undivided one-third interest in all of said lands upon the death of her said father, and subject only to her survival of him.

VII.

That the said Eliza R. P. Christian is, was, and at all times hereinafter mentioned has been, insane and mentally incompetent.

VIII.

That for many years prior to 1910 and prior to the happening of the events in that year hereinafter described, the respondent Waialua Agricultural Company, Limited had used and occupied large portions of the above described lands as a tenant under leaseholds executed to it by persons holding the legal estate in trust, pending the death of the life tenant as aforesaid, on considerable portions of which land said respondent corporation had planted and grown sugar cane in the course of its business in the cultivation and production of sugar, and petitioner alleges upon information and belief that in the year 1910, becoming desirous of acquiring said lands in fee simple, and more particularly of acquiring the undivided one-third in said land as to which the said John Dominis Holt was entitled to the income for life and as to which the said Eliza R. P. Christian would be entitled to the fee upon his death, the said respondent cor-

poration did undertake, enter upon and carry through the negotiations and transactions more fully hereinafter described. [7]

IX.

That in said year 1910 the said Eliza R. P. Christian was wholly incompetent mentally as aforesaid, and was unable to care for herself or her affairs, and was then residing in Oxford, England, with her cousin, Anne Holt Kentwell, in whose care she had been for many years; that the said Anne Holt Kentwell had complete control over said incompetent person, but that she was without knowledge as to the legal status of said incompetent and concerning her inability to execute a valid conveyance of her properties; that at said time respondent James L. Holt was resident in Honolulu, Hawaii, and was on friendly terms with and related to said Anne Holt Kentwell; that the said incompetent, the only child and sole heir in expectancy of her father, John Dominis Holt, was of the age of 24 years and, aside from her said mental affliction, was in general good physical healt hand condition, whereas the said John Dominis Holt, upon whose death the vesting of the interest in fee in the said Eliza R. P. Christian alone depended, was a man of 71 years of age; that at said time the interest in expectancy in fee in an undivided one-third of said lands to which said incompetent would be entitled upon the death of her said father, was of the value of upwards of

$300,000.00, and that all of the foregoing facts and circumstances were well known to respondent corporation, notwithstanding that the true worth and value of said property, dependent upon circumstances peculiarly within the knowledge of said respondent corporation, was unknown to and not disclosed to said Anne Holt Kentwell, and was, of course, entirely impossible of being understood by said incompetent, petitioner herein. [8]

X.

Petitioner alleges upon information and belief that thereupon the respondent corporation did employ and retain the law firm of Castle & Withington of Honolulu to represent it and act for it in the matter of procuring the conveyance to it of the so-called Christian interest in said property, and that as a first step in the plan then and thereupon undertaken by said respondent and in or about the months of March or April, 1910, the said James L. Holt was induced to come to and attend certain meetings or conferences held in the office of said attorneys, Messrs. Castle & Withington, in the course of which said James L. Holt was induced to enter into an agreement, portions of which agreement were reduced to writing and signed by the parties to be bound, W. R. Castle signing as Trustee and acting for and on behalf of said respondent corporation, the substance and effect of which agreement was as follows: That it was agreed in substance that the said James L. Holt, being in the confidence of said Anne Holt Kentwell, under whose

complete influence and control was said incompetent, Eliza R. P. Christian, should endeavor to induce said Anne Holt Kentwell to procure the signature of said incompetent to a deed purporting to convey the interest of said incompetent in said land at a cost to respondent corporation not to exceed the sum of $40,000.00, which moneys, it was agreed, were to be furnished by said respondent corporation through its representatives; it being further agreed that, notwithstanding that said James L. Holt was without funds to make said purchase, and notwithstanding that said purchase was to be made for immediate retransferal to said respondent corporation or its representatives or [9] appointees in trust, the negotiations were to be had with said Anne Holt Kentwell and with said incompetent as though said James L. Holt were in fact purchasing said property, and that the conveyance, if procured, was to be taken in the name of said James L. Holt; that it was further agreed that upon the procuring of said conveyance said James L. Holt was then and thereupon to execute his conveyance of the interest to be so acquired from said Eliza R. P. Christian, together with his own similar and equal interest in expectancy in said lands as the sole heir at law of James R. Holt, and that he was to receive from said respondent as consideration for his services in the premises and for his interest in said property the sum of $60,000.00; a further sum of $20,000.00 to be paid to one John L. Colburn, at that time the assignee and holder of the life inter-

ests in said property of John Dominis Holt and James R. Holt, and trustee for James L. Holt for certain purposes, making a total contemplated expenditure to said corporation of $120,000.00 for petitioner's interest as well as for the other interest above indicated in said lands.

XI.

Petitioner alleges upon information and belief that then and thereupon said James L. Holt, pursuant to said agreement, did endeavor to ascertain from England whether or not, if attempted, said plan might be reasonably expected to be successful, and having, as it was thought, ascertained that such was the fact, David Withington, Esquire, a member of said law firm of Castle & Withington, representing respondent corporation in the premises as aforesaid, who was then in the city of Washington, District of Columbia, was instructed by [10] said respondent corporation to proceed forthwith to England and there to appear, ostensibly as attorney for James L. Holt, but in fact acting in the interests of respondent corporation as aforesaid, in an endeavor to procure through said Anne Holt Kentwell, or in such manner as could be done, a conveyance of the said Christian interest at an expenditure to said corporation of not to exceed $40,000.00.

XII.

Petitioner alleges upon information and belief that thereupon said David Withington, Esq., did forthwith proceed to England, and did there call

upon said Anne Holt Kentwell, in whose home was the said incompetent, Eliza R. P. Christian; that the said David Withington, representing said respondent corporation as aforesaid, though ostensibly representing said respondent James L. Holt as aforesaid, was then and there given and did have ample opportunity for ascertaining for himself and those whom he represented the fact of said incompetency. Upon information and belief petitioner further alleges that said David Withington, as such attorney and representative, was fully aware of said mental incompetency of said Eliza R. P. Christian at the time of the happening of all of the events which there transpired as herein described.

XIII.

Plaintiff alleges upon information and belief that the said David Withington, acting for respondent corporation as aforesaid, did then and there represent to Anne Holt Kentwell as well as to said incompetent, Eliza R. P. Christian, who was, however, incapable of understanding said representation, that the interest of said Eliza R. P. Christian was of a value of [11] not more than $30,000.00, although in truth and in fact the value of said interest was in an amount of many times that sum, and did persuade and induce said Anne Holt Kentwell to assist in procuring the signature of said incompetent to a deed purporting to convey the interest of said incompetent to the respondent James L. Holt as aforesaid, and did succeed in procuring the signature of

said incompetent to said deed, said signature being affixed by said incompetent without any knowledge or understanding of the meaning of said document or of said signature; and that in said manner, although petitioner was wholly incompetent as aforesaid, her signature was procured to said document, and that said document was signed by no person for or on her behalf as her guardian or otherwise, all of which was well known to defendant corporation, and that said document was signed on, to-wit, May 2, 1910, in the manner aforesaid by said incompetent and by said Anne Holt Kentwell, purporting to convey her interest in the said land, and by John Dominis Holt, notwithstanding that all of his interest had theretofore been alienated and assigned away; that said document was subsequently returned to Hawaii and was recorded in the Office of the Registrar of Conveyances on, to-wit, the 23rd day of June, 1910, in Liber 337, page 75, of the records of said office, and that a true and correct copy thereof is hereto annexed, by reference made a part hereof, and marked Exhibit "B".

XIV.

Petitioner alleges upon information and belief that thereafter the said respondent corporation, through its agents and representatives, did represent to the respondent James L. [12] Holt that it had disbursed in procuring the execution to said James L. Holt of the conveyance hereinabove referred to and marked Exhibit "B", annexed hereto,

through the said David Withington in England, the following sums of money, pursuant to the agreement theretofore entered into with said respondent James L. Holt by W. R. Castle as trustee as hereinabove set forth, that is to say:

Stated to have been paid to Eliza R. P. Christian £6,141/5 @ $4.88½	$30,000.00
Stated to have been paid to Anne Holt Kentwell £1,023/10/10 @ $4.88½	5,000.00
Stated to have been paid by David L. Withington for various incidental expenses £19/15 @ $4.88½	92.92
Stated to have been paid by David L. Withington for other incidentals, including present to clerk	17.50
Total	$35,110.32

That petitioner is without information as to the manner of payment of said sum of $30,000.00 stated to have been paid to said Eliza R. P. Christian as aforesaid, or as to what person said moneys were paid, or as to how said moneys were used and applied, save and except that petitioner alleges that said money could not have been paid to and disposed of by said Eliza R. P. Christian, personally, inasmuch as she was wholly and utterly unable, because of her mental condition, to receive, handle or dispose of moneys, and petitioner further alleges that said sum of $30,000.0 was grossly, utterly, and

wholly inadequate as consideration for the interest of said Eliza R. P. Christian, as was well known to said respondent corporation and to its agents and representatives, and that [13] said transaction was unconscionable and inequitable and in fraud of the rights of said incompetent, Eliza R. P. Christian.

XV.

Petitioner alleges upon information and belief that promptly after the return of said deed of May 2, 1910 to Honolulu, and in fact even before said deed had been recorded, and pursuant to the agreement theretofore entered into as aforesaid, said respondent James L. Holt, on to-wit, May 28, 1910, did execute his deed to W. R. Castle as agent and trustee for respondent corporation, purporting to convey, among other things, the one-third interest in said lands of the said incompetent, Eliza R. P. Christian, but that upon the making of said conveyance the said James L. Holt received no money or consideration of any kind for the transfer to said W. R. Castle as trustee of said interest of the said incompetent, Eliza R. P. Christian, theretofore paid for by said respondent corporation as aforesaid, and was paid compensation only for the conveyance of his own interest in said land, also covered by said indenture of May 28, 1910, and for his services in the premises as aforesaid, for which interest and for which services said James L. Holt was paid the sum of $60,000.00, the balance of the consideration of $120,000.00 recited in said conveyance of May 28, 1910 representing sums alleged to have been dis-

bursed in England in procuring the said indenture of May 2, 1910, and moneys paid to one John F. Colburn appearing as a party to said indenture of May 28, 1910; and that said deed of May 28, 1910 is hereto annexed, by reference made a part hereof, and marked Exhibit "C".

XVI.

That thereafter and for a period of approximately ten [14] years and until May 17, 1920, as petitioner is informed and believes, the said William R. Castle, attorney for said respondent corporation as aforesaid, did continue to hold in trust as aforesaid for said respondent corporation, all rights covered by said deed of May 2, 1910, being Exhibit "B", attached hereto; that at the expiration of said period and on said May 17, 1920, said William R. Castle, trustee as aforesaid, did convey said rights to certain persons as trustees in the premises, as your petitioner is informed and believes and therefore alleges the fact to be, with the knowledge of and at the instigation and request of his beneficiary, said respondent corporation, all as more fully hereinafter set forth.

XVII.

That on May 17, 1920, W. R. Castle, trustee as aforesaid, did convey, among other things, all the rights covered by said conveyance marked Exhibit "B" attached hereto, and all rights covered by Exhibit "C" attached hereto, to J. R. Galt A. L. Castle, T. H. Petrie, R. A. Cooke, and R. B.

Anderson, as trustees designated and named trustees of the "HELEMANO REAL ESTATE TRUST"; and petitioner alleges upon information and belief that notwithstanding that the sum of $127,912.49 was recited in said conveyance as consideration therefor, $120,000.00 thereof represented and was merely the $120,000.00 theretofore claimed to have been paid for said lands ten years earlier, and recited as consideration in that certain conveyance to W. R. Castle, trustee, hereinabove referred to as Exhibit "C", and that the additional amount of upwards of $7,900.00 represented additional expenses incurred in the premises by the respondent corporation through its representatives, and that no new or in- [15] dependent consideration was furnished by any person or corporation other than respondent corporation, and that said trustees of the said Helemano Real Estate Trust as above mentioned, did thereafter and at all times hold such properties and rights as were conveyed by said indenture of May 17, 1920 in trust for said Waialua Agricultural Company, Limited, respondent herein, as ultimate beneficiary, and that a copy of said indenture of May 17, 1920, conveying said properties and rights to said trustees of said Helemano Real Estate Trust in trust as aforesaid, is hereto attached, by reference made part hereof, and marked Exhibit "D".

XVIII.

That thereafter said trustees of said Helemano Real Estate Trust continued to hold said properties

in trust as aforesaid until July of the year 1921; that on July 9, 1921, the provisions of Section 55 of the Organic Act providing for the Government of the Territory of Hawaii, theretofore providing, among other things, that no corporation should acquire or hold real estate in Hawaii in excess of 1,000 acres in area, and that all real estate so acquired or held should escheat to the United States, as amended by the Congress of the United States by repealing and deleting from said Section said provisions thereof, and that immediately thereafter and on July 20, 1921, by instrument in writing of that date, the said trustees of said Helemano Trust did convey all of the aforesaid properties directly to respondent corporation, Waialua Agricultural Company, Limited; and petitioner alleges upon information and belief that, notwithstanding that said conveyance of July 20, 1921 recites a consideration of $128,045.49, said sum rep- [16] resented merely moneys theretofore expended by said corporation as hereinabove indicated for said properties, with the small additional expenditure indicated, accruing as incidental to the final conveyance to the ultimate beneficiary, respondent corporation, for whom said properties had been held throughout under various trusts as hereinabove set forth, and petitioner alleges that said respondent corporation took and received said property with full and complete knowledge of all the matters and things hereinabove set forth, and that the dealings with said property herein indicated to have taken place after

the procuring of the deed of May 2, 1910 hereinabove referred to as Exhibit "B", were dealings carried through at the instigation, request and under the direction of respondent corporation, by whose agents and representatives and at whose expense said original conveyance of May 2, 1910 has been procured;

XIX.

Petitioner alleges that on April 10, 1922, John Dominis Holt, father of petitioner and the holder of the life interest intervening prior to the vesting of the rights of said petitioner in the lands referred to, died, leaving as his sole surviving heir the said petitioner, Eliza R. P. Christian, and that from and after said day said Eliza R. P. Christian became and was as such heir vested with an estate in fee simple in and to an undivided one-third of all the lands hereinabove described, and all rights of respondent corporation acquired by leases or by other forms of assignment of the interest of the intervening life tenant terminated; but that nevertheless respondent corporation continued thereafter to use and occupy said land without right or authority in the premises, and with- [17] out accounting to petitioner for the reasonable worth of said right and user. That, however, at said time and at all times herein mentioned, said Eliza R. P. Christian was wholly and utterly incompetent mentally, and unable to act on her own behalf in the premises, and until said George H. Holt was later appointed guardian, as herein set forth, was without any person author-

ised and qualified to act for her in the premises; and that said respondent corporation has, since the death of said John Dominis Holt, wrongfully and without right or justification claimed to be the owner of the petitioner's property by virtue of the deed hereinabove referred to as Exhibit "B", notwithstanding the facts and circumstances incidental to the procuring of said indenture, and notwithstanding the total incapacity of said Eliza Christian to have entered into or bound herself by any such undertaking, and petitioner is wholly and utterly without any or adequate relief in the premises, otherwise than through the order and decree of this court, canceling said deed as to her and granting further relief as herein otherwise prayed for.

XX.

That since the appointment and qualification of said George H. Holt as guardian of the estate of the said Eliza R. P. Christian, an incompetent, all due diligence has been used in promptly investigating all matters and things having to do with the rights of the said incompetent, and with all due diligence a careful and searching investigation has been carried through, which has disclosed the facts and circumstances hereinabove set forth, which has occupied the time which has intervened since said appointment, and that promptly upon having [18] completed said investigation and ascertained said facts and circumstances, said incompetent, acting through her said guardian, made due and timely demand upon the respondent corporation that it do

account to the said Eliza R. P. Christian, incompetent as aforesaid, for the use of her lands since the death of the said John Dominis Holt, and that it otherwise do justice in the premises, and that upon refusal of said respondent to comply with said demand within a reasonable time, petitioner, by her said guardian, is promptly filing this her complaint herein.

XXI.

Petitioner alleges that the value of the lawful right and interest of the said Eliza R. P. Christian in and to the lands herein referred to and now held and claimed by said respondent corporation is in an amount greatly in excess of a million dollars, and that the reasonable rental for the use and occupancy of said interest in said land during the period of approximately six years which has intervened since the death of the said John Dominis Holt, and properly payable to petitioner herein, is in an amount of many times the sum of $30,000.00, with interest since May 2, 1910, and petitioner, that justice full and complete may be done in the premises, in such manner as to the court may seem just, equitable, and in accord with the evidence to be adduced herein, does hereby offer to allow to respondent corporation a credit in the amount of $30,000.00 with interest from May 2, 1910 to date, said sum being and representing the money originally claimed to have been expended by respondent corporation, as aforesaid, as consideration for the interest of the said Eliza R. P. Chris-

tian, [19] in the event that the court finds from the evidence that in equity such should be done, such credit to be allowed in the acounting for rentals herein prayed for, or in such other manner as to this court may seem just and proper.

XII.

Petitioner alleges that after the appointment of the said George H. Holt as guardian for said incompetent, and promptly upon the ascertaining of the facts and circumstances hereinabove set forth, petitioner, acting by her said guardian, did disaffirm the said deed of conveyance of May 2, 1910, and petitioner, proceeding by her said guardian herein, without admitting any force or effect in said conveyance, does hereby disaffirm said deed and said transaction, and in the settlement to be had herein does tender back any and all consideration which may be shown to have been paid as consideration for the conveyance of her said interest, together with the interest thereon in the event and to the extent that this court may find herein that repayment should be made in equity and in justice.

XXIII.

That petitioner has no adequate and complete remedy at law.

WHEREFORE PETITIONER PRAYS:

1. That respondents above named and each of them be cited to appear and make answer unto petitioner's foregoing Petition in the manner and

form provided by law, answer under oath being hereby expressly waived; [20]

2. That it be ordered and decreed that respondents above named surrender up for cancellation that certain deed dated May 2, 1910, a copy of which is hereto annexed and marked Exhibit "B", and that said deed be cancelled and annulled as to said Eliza R. P. Christian by order of this Court and as to her decreed to be of no further force or effect;

3. That it be ordered and decreed that respondent Waialua Agricultural Company, Limited, do fully and completely account to petitioner of and concerning the reasonable and full rental of the undivided one-third interest in fee of petitioner in and to all of the lands hereinabove described, from April 10, 1922 to and including the date of judgment entered herein, together with interest thereon, and that said respondent Waialua Agricultural Company, Limited do pay to petitioner a sum of money which shall be and represent the aggregate of rentals accrued and accruing on said lands since said April 10, 1922 to and including the date of judgment entered herein, together with interest thereon from the dates upon which said rentals shall have accrued, credit to be given to said Waialua Agricultrual Company, Limited in such accounting for such sum or sums, if any, as to this Court may seem just and proper;

4. That it be ordered and decreed that respondent Waialua Agricultrual Company, Limited make and execute a good and sufficient deed of conveyance, conveying and releasing to petitioner an un-

divided one-third interest in and to all of the lands hereinabove described.

5. And that the Court do grant such other and further relief as to the Court may seem just and equitable, to the end [21] that complete justice and equity may be done in the premises, and that petitioner do have her costs of suit incurred herein.

Dated: Honolulu, T. H., May 9, 1928.

ELIZA R. P. CHRISTIAN, an incompetent person, by GEORGE H. HOLT, her guardian,

By ULRICH & [redacted]TE

By BARRY S. ULRICH

Her Attorneys.

Territory of Hawaii,
City and County of Honolulu—ss.

GEORGE H. HOLT, being first duly sworn, deposes and says that he is the George H. Holt named as guardian of ELIZA R. P. CHRISTIAN, an incompetent person, petitioner herein, and that by him as such gaurdian said incompetent makes said Petition herein; that he has read said foregoing Petition, knows the contents thereof, and that the allegations therein contained are true, save as to those matters stated to be alleged upon information and belief, and that as to them, he believes them to be true.

GEORGE H. HOLT

Guardian of Eliza R. P. Christian, an incompetent person.

Subscribed and sworn to before me this 9th day of May, 1928.

[Notarial Seal] MARION D. RAAB

Notary Public, First Judicial Circuit, Territory of Hawaii. [22]

EXHIBIT "A"

Know all men by these presents, that I, Robert W. Holt, of Honolulu, Oahu being of sound disposing mind and memory, do make and publish this my last Will and Testament, hereby revoking any Will by me at any time before made.

After the payment of my just debts, I make the following disposition of my property.

First. I give, devise and bequeath to my wife Wati Holt for the term of her natural life the sum of Eight Hundred Dollars to be paid to her yearly in Quarterly payments of Two Hundred Dollars, by my Executor hereinafter named, for her maintenance and support.

Second. I give, devise, and bequeath to my son John Dominis Holt one Quarter of all my Estate, both real and personal the income of the same to be paid to him by my Executor hereinafter named for his use and support for the term of his natural life and after the death of my said Son, I give, devise and bequeath the said one Quarter to the heirs of the said John Dominis Holt and their assigns.

Third. I give devise and bequeath to my son *Own* Jones Holt one Quarter of all my Estate, both

real and personal, the income of the same to be paid to him by my Executor hereinafter named for his use and support, for the term of his natural life, and after the death of my said Son, I give, devise and bequeath the said one quarter to the heirs of the said Owen Jones Holt and their assigns.

Fourth. I give, devise and bequeath to my son James Robinson Holt one Quarter of all my Estate, both real and per- [23] sonal the income of the same to be paid to him by my Executor hereinafter named for his use and support for the term of his natural life, and after the death of my said Son I give, devise and bequeath the said one Quarter to the heirs of the said James R. Holt and their assigns.

Fifth: I give and devise and bequeath to my daughter Elizabeth M. Aldrich wife of W. A. Aldrich, one quarter of all my Estate both real and personal, and to her heirs and assigns.

Sixth: I ordain and appoint William A. Aldrich, Executor of this my last Will and Testament.

In testimony whereof, I have hereunto set my hand and seal and publish and declare this as my last Will and Testament in presence of the witnesses named below this Twenty-Ninth day of May, A. D. Eighteen Hundred and Sixty-Two.

(Sgd) R. W. HOLT (S)

Signed, sealed, published and declared by the said Robert W. Holt as and for his last Will and Testament in presence of us who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

(Sig) J. W. AUSTIN
CHAS. R. BISHOP
ROBERT LAWRENCE

I hereby make this Codicil to the foregoing Will, and I give devise and bequeath to the Queen's Hospital in the City of Honolulu, Oahu the sum of Five Hundred Dollars to be expended by the Trustees of the said Queen's Hospital for its benefit:

(Sig) R. W. HOLT

Subscribed in presence of us this 30th day of May, A. D. 1862.

(Sig) J. W. AUSTIN [24]
(Sig) CHAS. R. BISHOP
ROBERT LAWRENCE

Hawaiian Islands
Oahu S. S.

Be it remembered, that, on this 26th day of July 1862, the above written was duly proved before me in the Supreme Court of the Hawaiian Islands as and for the Last Will and Testament of Robert W. Holt of Honolulu, Oahu, late deceased.

In the testimony whereof, I have hereunto set my hand and caused to be affixed the Seal of the Su-

preme Court of the Hawaiian Islands the day and year above written.

(Sig) G. M. ROBERTSON

(S) Justice Supreme Court. [25]

EXHIBIT 'B"

KNOW ALL MEN BY THESE PRESENTS: That we, John Dominis Holt, Widower, Eliza R. P. Christian, wife of Albert Christian, daughter R.W V.C.

and of

~~of~~ sole heir ~~and~~ said John Dominis Holt, Annie Holt Kentwell, and Lawrence K. Kentwell, husband of the said Annie Holt Kentwell, all now commorant at Oxford, in the County of Oxford, in the United Kingdom of Great Britain and Ireland, hereafter termed the Grantors, in consideration of the sum of Thirty-five thousand dollars ($35,000.00) to them in hand paid by James Lawrence Holt of Honolulu, in the Territory of Hawaii, in the United States of America, hereafter termed the Grantee, the receipt of which sum is hereby acknowledged, have given, granted, bargained, sold and conveyed and by these presents do give, grant, bargain, sell and convey unto the said James Lawrence Holt, the said Grantee, one undivided third part of interest in and to the following parcels of land and each of them namely:

1. Ahupuaa of Paalaa, being Apana 34 of L.C.A. 7713, R. P. 4475 to V. Kamamalu, containing an area of 12237 acres, more or less.

2. Ahupuaa of Wahiawa, being R.P. (Grant) 978, containing an area of 1942 acres, more or less.

3. R.P. (Grant) 235 to Jerome Topliffe and Louis Johnson, containing an area of 36 acres, more or less.

4. R.P. (Grant) 238 to J. F. Anderson and F. Davis, containing an area of 25.8 acres, more or less.

5. R.P. (Grant) 431, containing an area of 100 acres, more or less. [26]

All of said lands being situated in the District of Waialua, in the Island of Oahu and Territory of Hawaii aforesaid; intending hereby to convey all the interest of the said Grantors, whether present, prospective or in remainder, vested or contingent, of every name and description in and to said lands or which they or either of them may hereafter acquire in and to the said lands, and particularly every interest which the said Grantors or either of them may now have or may hereafter acquire under the Will of R. W. Holt, deceased, the father of said John Dominis Holt, and grandfather of said Eliza R. P. Christian and R.W. V.C.
not including Makaha
Annie Holt Rentwell, subject, however, to a certain Deed of Trust made by said James Lawrence Holt,

the Grantee, to John F. Colburn, and to a certain lease dated the First day of April, one thousand nine hundred and five made by Carlos A. Long, Administrator and others including the Grantors herein, to the Waialua Agricultural Company, Limited, both of which instruments are of record in the Registry Office of said Territory but intending to convey all the rights of the Grantors and each of them against said Trustee and said Company and under said Deed and Lease the said Grantors assigning and setting over to the said Grantee all claims and demands which they may have arising out of either said instruments or in any other way against the said James Lawrence Holt the said Waialua Agricultural Company, Limited, or the said John F. Colburn, said Trustee, save and except the right to the personal estate of the said R. W. Holt which may be in the hands of said John F. Colburn, Trustee, it being the intention to convey all the interests of the Grantors in the estate left by said R. W. Holt or the property into which it R.W. V.C.

not including Makaha

has been converted with the excep- [27] tion of the said personal estate.

TO HAVE AND TO HOLD to the said James Lawrence Holt, the Grantee, his heirs and assigns, to his and their use and behoof forever.

The said Grantors, for themselves, their heirs, executors and administrators covenant with the

said Grantee, his heirs, executors, administrators and assigns, that they have good title in and to the described premises; that they have good right to convey the same; that the same are free from incumbrances, except as aforesaid; and that they will warrant and defend the same against the claims and demands of all persons, except as aforesaid; and that they and their heirs, executors and administrators will on demand of said Grantee, his heirs, executors, administrators or assigns, execute to him or them such instruments or instrument as may be necessary or by him or them deemed advisable at any time to perfect the title in the Grantee, his heirs, executors, administrators and assigns, in and to that portion of the estate of R. W. Holt devised by his Will to John Dominis Holt, and at his death to his heirs and assigns.

IN WITNESS WHEREOF, the Grantors have set their hands and seals this second day of May one thousand nine hundred and ten, the said Albert Christian, husband of said Eliza R. P. Christian, joining in consent thereto by a separate instrument executed within said Territory of Hawaii.

JOHN D. HOLT
ELIZA R. P. CHRISTIAN
ANNIE HOLT KENTWELL
ALBERT CHRISTIAN
LAWRENCE K. KENTWELL
DAVID L. WITHINGTON

Witness to signature of Albert Christian
W. H. PICKERING
ROBERT L. COBURN. [28]

I hereby certify that the words "of" and "and" line three, page one, were struck out and the words "and" and "of" inserted respectively, in their place, and the words "not including Makaha" line eight page two and the words "not including Makaha" line twenty-six page two, were respectively interlineated, all before signature and execution by Albert Christian.

[Notarial Seal] CHARLES EDELMAN
Notary Public, in and for the City and County of San Francisco, State of California. My commission expires April 9, 1914.

Kingdom of Great Britain and Ireland,
City of London, England,
United States Consulate General.

On this 2nd day of May, A. D. 1910, personally appeared before me John Dominis Holt, widower, Eliza R. P. Christian, wife of Albert Christian, Annie Holt Kentwell and Lawrence K. Kentwell, her husband, satisfactorily proved to me to be the persons described in and who executed the foregoing instrument by the oath of David L. Withington, a credible ~~person~~ witness for that purpose, to me known and by me duly sworn, and they the said John Dominis Holt, Eliza R. P. Christian, Annie Holt Kentwell and Lawrence K. Kentwell, acknowledged that they executed the same freely and voluntarily for the uses and purposes therein set forth.

WITNESS my hand and seal of office at London, England, this the 2nd day of May, A. D. 1910.

[Seal] RICHARD W. STACOTT
Vice-Consul of the United States of America at London, England.

American Consular Fee Stamp $2. [29]

State of California,
City and County of San Francisco—ss.

On this sixteenth day of May, A. D. 1910, before me personally appeared Albert Christian, to me known to be one of the persons referred to in the within instrument and therein described as the husband of Eliza R. P. Christian, and being one of the persons who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Notarial Seal] CHARLES EDELMAN
Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 9, 1914.

And I further certify that the words "and" and "of" in the third line of page one, and the words "not including Makaha" in the eighth line of page two, and the words "not including Makaha" in the twenty-sixth line of page two, were made before the execution of said instrument by the said Albert Christian.

[Notarial Seal] CHARLES EDELMAN,
Notary Public.

State of California,
City and County of San Francisco—ss.

I, H. I. MULCREVY, Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, which Court is a Court of Record, having a seal, do hereby certify that Charles Edelman, by and before whom the foregoing acknowledgement was taken was, at the time of taking the same, a Notary Public residing in said City and [30] County, and duly authorized by said State to take and certify acknowledgments or proofs of deed of land in said state; and further, that I am well acquainted with the handwriting of said Charles Edelman, and that I verily believe that the signature to said certificate of acknowledgment is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 16th day of May, 1910.

[Seal] H. I. MULCREVY
County Clerk and Ex-Officio
Clerk of the Superior Court.

Entered of record this 23rd day of June, A. D. 1910, at 11:24 o'clock A. M., and compared.

CHAS. H. MERRIAM,
Registrar of Conveyances. [31]

EXHIBIT "C"

THIS INDENTURE, made this 28th day of May A. D. 1910, by and between JAMES LAWRENCE HOLT, party of the first part, John F. Colburn, Trustee for James Lawrence Holt, party of the second part, and William R. Castle, Trustee, party of the third part, all of Honolulu, City and County of Honolulu, Territory of Hawaii:

WITNESSETH: That in consideration of One Hundred Twenty Thousand Dollars ($120,000.00) to the said James Lawrence Holt and John F. Colburn, Trustee, in hand paid by the said William R. Castle, Trustee, the receipt whereof is hereby acknowledged, the said James Lawrence Holt and John F. Colburn, Trustee, do and each of them does, give, grant, bargain, sell and convey unto the said William R. Castle, Trustee, his heirs and assigns, a two-third (2/3) undivided share or part of all those certain pieces or parcels of land lying and situate in the District of Waialua, in the City and County of Honolulu, aforesaid, known as the "Holt Estate Lands", to-wit:

1. The land known as the Ahupuaa of Paalaa, being Apana 34 of the land described in Royal Patent 4475, Land Commission Award 7713 to V. Kamamalu.

2. The land at Wahiawa mentioned or described in Royal Patent (Grant) 973 to James Robinson, Robert Lawrence, and Robert W. Holt.

3. The land at Paukauila mentioned or described in Royal Patent (Grant) 431 to Kauohanui.

4. The land at Kamananui mentioned or described in Royal Patent (Grant) 235 to Jerome Toplift and Lewis Johnson. [32]

5. The land at Kamananui mentioned or described in Royal Patent (Grant) 238 to John F. Anderson and Franklin Davis.

6. And all Kuleanas or Grants lying within the above lands and premises, or any or each of them, to which the said James Lawrence Holt and John F. Colburn, Trustee, or either of them, claim title or ownership.

Together with all the rents, income, right title, interest, estate, property, claims and demands, in law or in equity, vested, contingent or in expectation, of the said James Lawrence Holt and John F. Colburn, Trustee, and each of them, in and to or arising out of or in connection with said pieces or parcels of land hereinbefore described.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, properties and rights, together with all and singular the tenements, rights, easements, privileges and appurtenances to the same belonging or appertaining or held or enjoyed, unto the said William R. Castle, Trustee, his heirs and assigns forever.

And the said James Lawrence Holt, for himself and for his heirs, executors and administrators, covenants and agrees with the said William R. Castle, Trustee, his heirs and assigns, that he and the said John F. Colburn, Trustee, are seized in fee of an undivided two-thirds (2/3) part or share of

the said pieces or parcels of land hereinbefore described, with the appurtenances thereunto belonging; that the said undivided two-thirds (2/3) part or share of the said pieces or parcels of land hereinbefore described are free and clear of all incumbrances of whatsoever nature or kind; that they have good right [33] to sell and convey the same as aforesaid; that he, the said James Lawrence Holt, will and his heirs, executors and administrators shall warrant and defend the same to the said William R. Castle, Trustee, his heirs and assigns, against the lawful claims and demands of all persons whomsoever; and, further, that the said James Lawrence Holt and John F. Colburn, Trustee, and all persons claiming by, through or under them and each of them, will do and execute, acknowledge and deliver all such further deeds, transfers and assurances for the better and more effectually assuring, conveying and confirming unto the said William R. Castle, Trustee, his heirs and assigns, all and singular the property hereby conveyed or intended to be conveyed, as by him or them or by his or their counsel shall be required, and that the said William R. Castle, Trustee, his heirs and assigns, shall be held harmless and shall not be liable or responsible in any manner to see to the application of the purchase price hereof.

And James R. Holt, of said Honolulu, in consideration of the premises and of the sum of One Dollar to him paid by the said William R. Castle, Trustee, the receipt whereof is hereby acknowledged, does

bargain, sell, remise, release, quit-claim, convey and confirm to the said William R. Castle, Trustee, his heirs and assigns forever, all his estate, right, title, interest, claim and demand of whatsoever nature or kind, and whether present, prospective, in expectancy or otherwise, in, to or arising out of or in connection with the premises and property hereby conveyed or intended to be conveyed.

And Lokalia Holt, wife of said James R. Holt, in consideration of the premises and of the sum of One Dollar to her [34] paid by said William R. Castle, Trustee, the receipt whereof is hereby acknowledged, does bargain, sell, remise, release, quit-claim, convey and confirm to him, his heirs and assigns, all her estate, right, title, interest, claim and demand of whatsoever nature or kind, and whether present, prospective, in expectancy or otherwise, including dower, in, to or arising out of or in connection with the premises and property hereby conveyed or intended to be conveyed.

And Lena S. Holt, wife of said James Lawrence Holt, in consideration of One Dollar to her paid, the receipt whereof is hereby acknowledged, does remise, release, quit-claim and convey to the said William R. Castle, Trustee, his heirs and assigns, all her right, title, interest or claim of dower in and to the premises and property hereby conveyed or intended to be conveyed.

IN WITNESS WHEREOF, the said James Lawrence Holt, John F. Colburn, Trustee, James R. Holt, Lokalia Holt and Lena S. Holt, have hereto

set their hands and seals the day and year first above written.

JAMES LAWRENCE HOLT
JOHN F. COLBURN,
Trustee for James L. Holt.
JAMES R. HOLT
LENA S. HOLT
LOKALIA HOLT

Territory of Hawaii,
City and County of Honolulu,
District of Honolulu—ss.

On the 28th day of May, A. D. 1910, personally appeared before me James Lawrence Holt and Lena S. Holt, his wife, both [35] known to me, and on this 31st day of May, A. D. 1910, personally appeared before me John F. Colburn, Trustee for James L. Holt, and James R. Holt and Lokalia Holt, his wife, also known to me to be the persons described in and who executed the foregoing instrument, who severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein set forth. And the said John F. Colburn, further acknowledged to me that he executed the said instrument as such Trustee.

[Notarial Seal] N. FERNANDEZ
Notary Public, First Judicial Circuit, Territory of Hawaii.

Entered of record this 31st day of May, A. D. 1910, at 12:15 o'clock P. M. and compared.

CHAS. H. MERRIAM,
Registrar of Conveyances. [36]

EXHIBIT "D"

KNOW ALL MEN BY THESE PRESENTS: That William R. Castle, of Honolulu, Territory of Hawaii, Trustee, hereinafter called the "Grantor", in consideration of One Hundred Twenty-seven Thousand Nine Hundred Twelve Dollars and Forty-Nine Cents ($127,912.49) to him paid by J. R. Galt, A. L. Castle, T. H. Petrie, R. A. Cooke and R. B. Anderson, all of said Honolulu, Trustees of the Helemano Real Estate Trust, hereinafter called the "Grantees", the receipt whereof is hereby acknowledged, does bargain, sell and convey unto the said Grantees, their ~~heirs~~, successors in trust and assigns:

F. L.

A two-thirds (2/3) undivided share or part of all those certain pieces or parcels of land lying and situate in the District of Waialua, in the City and County of Honolulu aforesaid, known as the "Holt Estate Lands", to-wit:

1. The land known as the Ahupuaa of Paalaa, being Apana 34 of the land described in Royal Patent 4475, on Land Commission Award 7713 to V. Kamamalu.

2. The land at Wahiawa mentioned or described in Royal Patent (Grant) 973 to James Robinson, Robert Lawrence and Robert W. Holt.

3. The land at Paukauila mentioned or described in Royal Patent (Grant) 431 to Kauohanui.

4. The land at Kamananui mentioned or described in Royal Patent (Grant) 235 to Jerome Topliff and Lewis Johnson.

5. The land at Kamananui mentioned or described in Royal Patent (Grant) 238 to John F. Anderson and Franklin Davis. [37]

6. And all Kuleanas or Grants lying within the above lands and premises, or any or each of them, to which the said Grantor claims title or ownership.

Together with all the rents, income, right, title, interest, estate, property, claims and demands, in law or in equity, vested, contingent or in expectation, of the said Grantor in and to or arising out of or in connection with said pieces or parcels of land hereinbefore described.

Hereby intending to convey all the estate, rights, title and interest of the said Grantor in the lands, tenements, hereditaments, premises and property described in and as conveyed to him by deed of James Lawrence Holt and John F. Colburn, Trustee, dated May 28, 1910, and recorded in Liber 332, on pages 148-151, Hawaiian Registry of Deeds.

Together with any and all other the estate, right, title and interest of the said Grantor in and to the above described and conveyed premises.

To have and to hold the same, together with all and singular the tenements, rights, easements, privileges and appurtenances to the same belonging or appertaining or held and enjoyed therewith, unto the said Grantees, their heirs successors in trust and assigns, forever.

F.L. N.P.
F.L. N.P.

And, as a part of the consideration of these presents, the said Grantees, for themselves, their heirs, successors in trust and assigns convenant with the said Grantor, his heirs, executors and administra-

tors, that they will, beginning June 1, 1920, and monthly thereafter, pay the annuity secured to Robert Holt and Hokela Holt, his wife, et al., to William R. [38] Castle, Trustee, dated September 21, 1917, and recorded in Liber 482, Page 314, said Registry.

IN WITNESS WHEREOF, the said Grantor and the Grantees as said Trustees, have set their hands hereunto this 17th day of May, 1920.

WILLIAM R. CASTLE,
Trustee.

J. R. GALT,
by His Attorney-in-Fact.

HAWAIIAN TRUST CO., LTD.,
[Corporate Seal] By H. H. WALKER, V. Pres.

R. K. McLEAN, Secy.,
A. L. CASTLE,
T. H. PETRIE,
R. A. COOKE,
R. B. ANDERSON,
Trustees of the Helemano Real Estate Trust

I certify that the words "heirs" was stricken from line 9 on page 1, and from lines 16 and 19 on *page of* the foregoing instrument, before execution.

FLORENCE LEE,
Notary Public.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 17th day of May, 1920, before me appeared H. H. Walker and P. K. McLean, both to me personally known, who, being by me severally duly

sworn, did say that they are the Vice-President and Secretary, respectively, of Hawaian Trust Company, Limited, an Hawaiian corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in [39] behalf of said corporation as the attorney in fact for and on behalf of J. R. Galt, by authority of its Board of Directors, and said H. H. Walker and P. K. McLean severally acknowledged said instrument to be the free act and deed of said J. R. Galt, as Trustees of the Helemano Real Estate Trust; and on said 17th day of May, 1920, before me personally appeared A. L. Castle, T. H. Petrie, R. A. Cooke and R. B. Anderson, all to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the said instrument, as thier free act and deed as Trustees of the Helemano Real Estate Trust.

And on said 17th day of May, 1920, before me personally appeared *appeared* William R. Castle, to me known to be the person described in and who executed the foregoing instrument as Trustee, and acknowledged that he executed the same as his free act and deed as Trustee.

[Notarial Seal] FLORENCE LEE,
Notary Public, First Judicial Circuit, Territory of Hawaii.

Entered of record this 18th day of May, A. D. 1920, at 3:42 o'clock P. M. and compared.

P. H. BURNETTE,
Registrar of Conveyances.

EXHIBIT "E"

WHEREAS, on May 17, 1920, William R. Castle, Trustee, made, executed and delivered to J. R. Galt, A. L. Castle, T. H. Petrie, R. A. Cooke and R. B. Anderson, Trustees of the Helemano Real Estate Trust, a deed by way of conveyance of all the lands, tenements, hereditaments, premises and property herein and hereby conveyed and expressed as intended to be conveyed and as hereinbelow more fully described, which deed is recorded in Liber 553, on Pages 103-106, Hawaiian Registry of Deeds, all of which lands, tenements, hereditaments, premises and property are held by the said J. R. Galt, A. L. Castle, T. H. Petrie, R. A. Cooke and R. B. Anderson under the trusts set out and expressed in a declaration of trust made and executed by them on May 17, 1920, which declaration of trust is recorded in Liber 546, on Pages 435-442, said Registry; and

WHEREAS, the said A. L. Castle, one of the Trustees above named, is absent from the Territory of Hawaii; and

WHEREAS, on July 14, 1921, by an instrument in writing the owners of not less than three-fourths in value of the shares of the Helemano Real Estate Trust, pursuant to the requirement set out and expressed in the declaration of trust above referred to, directed the said J. R. Galt, A. L. Castle, T. H. Petrie, R. A. Cooke and R. B. Anderson, as such Trustees, to terminate the said trust and to sell all the trust property to the Waialua Agricultural

Company, Limited, a Hawaiian corporation, for the sum of One Hundred Twenty-eight Thousand and Forty-five Dollars and Forty-nine Cents ($128,-045.49) and to distribute the proceeds proportionately among the owners of [41] the shares in and of said Helemano Real Estate Trust, which instrument is recorded in Liber 602, Page 321, said Registry;

NOW, THEREFORE, this indenture witnesseth: That said J. R. Galt, A. L. Castle, T. H. Petrie, R. A. Cooke and R. B. Anderson, all of Honolulu, Territory of Hawaii, Trustees of the Helemano Real Estate Trust, hereinafter called the "Grantors" pursuant to the aforementioned, written declaration of the owners of not less than three-fourths in value of the shares of the Helemano Real Estate Trust, and of the powers and authority in them vested and as set out and expressed in the said declaration of trust so recorded in Liber 546, on Pages 435-442, aforesaid, and of every other power thereunto them enabling, and in consideration of the sum of One Hundred Twenty-eight Thousand and Forty-five Dollars and Forty-nine Cents ($128,-045.49) to them paid by the Waialua Agricultural Company, Limited, a Hawaiian corporation, hereinafter called the "Grantee" the receipt of which sum of money is hereby acknowledged, do bargain, sell and convey unto the Grantee, its successors and assigns:

A two-thirds (2/3) undivided share or part of all those certain pieces or parcels of land lying and

situate in the District of Waialua, in the City and County of Honolulu, Territory of Hawaii, known as the "Holt Estate Lands", to-wit:

1. The land known as the Ahupuaa of Paalaa, being Apana 34 of the land described in Royal Patent 4475, on Land Commission Award 7713 to V. Kamamalu;

2. The land at Wahiawa mentioned or described in Royal Patent (Grant) 973 to James Robinson, Robert Lawrence and Robert W. Holt; [42]

3. The land at Pavkauila mentioned or described in Royal Patent (Grant) 431 to Kauohanui;

4. The land at Kamananui mentioned or described in Royal Patent (Grant) 235 to Jerome Topliff and Lewis Johnson;

5. The land at Kamananui mentioned or described in Royal Patent (Grant) 238 to John F. Anderson and Franklin Davis;

6. And all Kuleanas or Grants lying within the above lands and premises, or any or each of them to which the said Grantors claim title or ownership.

Together with all the rents, income, right, title, interest, estate, property, claims and demands, in law or in equity, vested, contingent or in expectancy, of the said Grantors as such Trustees in and to or arising out of or in connection with said pieces or parcels of land hereinbefore described;

Hereby intending to convey all the estate, right, title, and interest of the said Grantors in the lands, tenements, hereditaments, premises and property

described in and as conveyed to them as such Trustees by deed of William R. Castle, Trustee, dated May 17, 1920, recorded in Liber 553 on Pages 103-106, said Registry;

Together with any and all the estate, right, title and interest of the said Grantors as such Trustees in and to the above described and conveyed premises;

TO HAVE AND TO HOLD the same, together with all and singular the tenements, rights, easements, privileges and appurtenances to the same belonging or appertaining or held and enjoyed therewith unto the said Grantee, its successors [43] and assigns, forever;

And as a part of the consideration of these presents, the said Grantee, for itself, its successors and assigns, covenants with the said Grantors and their respective heirs, executors and administrators, that it will, beginning August 1, 1921, and monthly thereafter, pay the annuity secured to Robert Holt and Hokela Holt, his wife, under the provisions of a deed from Robert Holt, et als, to William R. Castle, Trustee, dated September 21, 1917, and recorded in Liber 482, Page 314, said Registry.

IN WITNESS WHEREOF, the said Grantors, J. R. Galt, T. H. Petrie, R. A. Cooke and R. B. Anderson, have hereunto set their hands as such Trustees, and the Grantee has hereunto caused its corporate name to be signed and its corporate seal to be hereto affixed by its President and Treasurer

thereunto duly authorized, all this 20th day of July, 1921.

J. R. GALT,
T. H. PETRIE,
R. A. COOKE,
R. B. ANDERSON,
Trustees of the Helemano Real Estate Trust.

WAIALUA AGRICULTURAL COMPANY, LIMITED

[Corporate Seal] By E. D. TENNEY,
Its President.

By CHAS. H. ATHERTON,
Its Treasurer.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 20th day of July, A. D. 1921, personally appeared before me J. R. Galt, T. H. Petrie, R. A. Cooke and R. B. Anderson, known to me to be the persons described in [44] and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein set forth, as Trustees of the Helemano Real Estate Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] ARCH'D. S. GUILD
Notary Public, First Judicial Circuit, Territory of Hawaii.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 20th day of July, A. D. 1921, before me appeared E. D. Tenney and Chas. H. Atherton, to me personally known, who, being by me duly sworn, did say that they were the President and Treasurer, respectively, of Waialua Agricultural Company, Limited, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said E. D. Tenney and Chas. H. Atherton acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] ARCH'D. S. GUILD,
Notary Public, First Judicial Circuit, Territory of Hawaii.

Entered of record this 20th day of July, A. D. 1921, at 11:25 o'clock A. M. and compared.

P. H. BURNETTE,
Registrar of Conveyances. [45]

[Title of Court and Cause.]

CHAMBERS SUMMONS.

The Territory of Hawaii:

TO THE HIGH SHERIFF OF THE TERRITORY OF HAWAII, OR HIS DEPUTY: THE SHERIFF OF THE CITY AND COUNTY OF HONOLULU, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE TERRITORY OF HAWAII:

YOU ARE COMMANDED to summon WAIALUA AGRICULTURAL COMPANY, LIMITED, a Hawaiian corporation, and JAMES L. HOLT, to appear TEN DAYS after service hereof, if they reside in the City and County of Honolulu, otherwise TWENTY DAYS after service, before such Judge of the Circuit Court of the First Circuit as shall be sitting at Chambers in the Court Room of said Judge, in the Judiciary Building in Honolulu, City and County of Honolulu, to answer the annexed Petition.

And have you then there this writ with full return of your proceedings thereon.

WITNESS the Honorable ALBERT M. CRISTY, Presiding Judge of the Circuit Court of the First Circuit, at Honolulu aforesaid, this 9th day of May, 1928.

[Seal] SIBYL DAVIS,

Clerk. [46]

Served the within Summons as follows—

On WAIALUA AGRICULTURAL COMPANY, LTD., a Hawaiian corporation, through T. H. Petrie, its Vice President and JAMES L. HOLT, at Honolulu, T. H. this 9th day of May A. D. 1928, by delivering to each of them a certified copy thereof and of the petition or complaint hereto annexed, and at the same time showing them the original.

Dated, Honolulu, May 9th, 1928.

B. K. CUMMINS,
Police Officer. [46-A]

[Title of Court and Cause.]

ANSWER OF JAMES L. HOLT.

Filed at 1:50 o'clock P. M., May 18, 1928. A. E. Restarick, Clerk. [47]

Comes now JAMES L. HOLT, respondent above named by his attorney, JOHN R. DESHA, and for answer to the petition on file herein, shows unto this Honorable Court as follows:

I.

Respondent admits the allegations contained in Paragraphs I, II, III, IV, V, and VI of said petition.

II.

Answering the allegations contained in Paragraph VII of said petition, respondent admits that the said Eliza R. P. Christian is, and was at all

times mentioned in said petition, mentally incompetent.

III.

Answering the allegations contained in Paragraph VIII of said petition, respondent alleges that he is without definite information as to the use and occupancy of the lands in question by respondent Waialua Agricultural Company, Ltd., and leaves petitioner to her proof of the allegations in said paragraph contained in that regard, and respondent admits the [48] truth of the allegations in said paragraph referred to concerning the negotiations and transactions had by said respondent corporation of and concerning said lands insofar as your respondent was a party to such negotiations and transactions.

IV.

Answering the allegations contained in Paragraph IX of said petition, respondent admits that the said Eliza R. P. Christian was mentally incompetent as aforesaid; that she was, in the year 1910, residing at Oxford, England, in the care of her cousin Anne Holt Kentwell; that said Anne Holt Kentwell had control of said incompetent person; that your respondent was residing in Honolulu at said time and on friendly terms and related to said Anne Holt Kentwell and alleges that he is and was a first cousin of said Anne Holt Kentwell, and of said Eliza R. P. Christian; that said Eliza R. P. Christian and said John Dominis Holt were at said

time of the ages as set forth in said paragraph; but respondent is without definite knowledge as to the knowledge of said Anne Holt Kentwell concerning the legal status of said incompetent, the condition of the health of said incompetent at said time, the value of the interest of said incompetent in said lands at said time, and the extent to which disclosure of circumstances within the knowledge of respondent Waialua Agricultural Company, Ltd., was or was not made to said Anne Holt Kentwell, or attempted to be made to said incompetent, and therefore leaves petitioner to her proof of the allegations in said paragraph contained in these regards. [49]

V.

Answering the allegations contained in Paragraph X of said petition, respondent admits that in or about the months of March or April, 1910, as alleged in said paragraph, he, said respondent, James L. Holt, was induced to, and did, attend said meetings or conference held in the office of Messrs. Castle & Withington, attorneys for said respondent corporation, and that he did enter into an agreement with said respondent corporation as in said paragraph alleged.

VI.

Answering the allegations contained in Paragraph XI of said petition, respondent admits that pursuant to said agreement, as in said paragraph alleged, he did endeavor to ascertain from Eng-

land, whether or not if attempted said plan might be reasonably expected to be successful, and that he did, as he thought, ascertain such to be the fact, and did communicate this information to said attorneys for respondent corporation, and upon information and belief, your respondent admits the truth of the allegations in said paragraph contained, concerning the dispatching of said David Withington, attorney for respondent corporation, then in Washington, D. C., to England on the mission and for the purpose in said paragraph set forth.

VII.

Answering the allegations contained in Paragraph XII of said petition, respondent alleges that he is without definite knowledge as to what transpired in England between said attorney, David Withington, and said Anne Holt Kentwell and said incompetent, and therefore leaves petitioner to her [50] proof of the allegations in said paragraph contained.

VIII.

Answering the allegations contained in Paragraph XIII of said petition, respondent alleges that he is without knowledge as to what representations, if any, were made by said David Withington to said Anne Holt Kentwell or to said incompetent, or as to the manner in which the signature of said incompetent to the deed therein referred to was procured, and therefore leaves petitioner to her proof of the

allegations in said paragraph contained in these regards, and in this connection, respondent alleges that throughout his negotiations and transactions with said Waialua Agricultural Company, Ltd., through its said attorneys, it was his understanding and belief that said respondent corporation fully understood and appreciated the mental condition and incompetency of said Eliza R. P. Christian, and that he left entirely to said respondent corporation and its representatives the matter of procuring the execution of said conveyance, and of attending to the taking of such steps as might be required to give said conveyance validity, and although the details of the manner in which the conveyance of said incompetent was to be procured were not considered or discussed between respondent and said corporation respondent during the pendency of said negotiations, respondent, at all times, assumed that said respondent corporation, through its representatives as aforesaid, did take and had taken all necessary steps in this regard; and in this connection respondent alleges that said deed of May 2, 1910, [51] was never delivered to him personally, but that, to the best of his knowledge and belief, it at all times remained in the possession of said respondent corporation, or its attorneys or representatives, where, so far as he knows, it still is; but respondent admits that the deed therein referred to and marked Exhibit "B" was recorded in the office of the Registrar of Conveyances, at Honolulu, in

Hawaii, as therein alleged, and that said deed was signed by no person legally authorized to act for or on behalf of said incompetent as her guardian or otherwise.

IX.

Respondent admits the allegations contained in Paragraph XIV of said petition, save and except that respondent is without definite knowledge as to the true worth and value of the interest of said Eliza R. P. Christian in said lands and therefore leaves petitioner to her proof of the allegations in said paragraph contained in that regard.

X.

Answering the allegations contained in Paragraph XV of said petition, respondent admits that on to-wit: May 28, 1910, and before the deed to him referred to as Exhibit "B" in said petition had ever been recorded, he did execute his deed to W. R. Castle, as agent and trustee as in said paragraph alleged, and respondent admits that he received no money or consideration of any kind for said transfer to said W. R. Castle, as trustee aforesaid and that he was paid compensation only for the conveyance of his own interest in said lands and for his services in the premises as in said paragraph set forth, and respondent admits [52] the truth of the remaining allegations in said paragraph contained.

XI.

Answering the allegations contained in Paragraph XVI of said petition, respondent is without

knowledge other than as to the fact of the conveyance by him to said W. R. Castle, trustee, and the subsequent conveyance of May 17, 1920, by W. R. Castle, trustee, to the trustees of the "HELEMANO REAL ESTATE TRUST", and save and except as to these conveyances respondent leaves petitioner to her proof of the allegations in said paragraph contained.

XII.

Answering the allegations contained in Paragraph XVII of said petition, respondent is without knowledge save and except as to the fact of the conveyance of May 17, 1920, from W. R. Castle, trustee, to said trustees of the "HELEMANO REAL ESTATE TRUST", referred to as Exhibit "C", and, therefore, save and except as to that fact, leaves petitioner to her proof of the allegations in said paragraph contained.

XIII.

Answering the allegations contained in Paragraph XVIII of said petition, respondent is without knowledge except as to the fact of the conveyance from the trustees of said "HELEMANO REAL ESTATE TRUST", to said Waialua Agricultural Company, Ltd., dated July 20, 1921, and of the fact of the repeal by the Congress of the United States of the provisions of Section 55 of the Organic Act providing for the government of the Territory of Hawaii, on [53] July 9, 1921, as therein set forth, and therefore, save and except as

to these facts, respondent leaves petitioner to her proof of the allegations in said paragraph contained.

XIV.

Answering the allegations contained in Paragraph XIX of said petition, respondent admits that John Dominis Holt, father of said incompetent, died on April 10, 1922, leaving said incompetent, Eliza R. P. Christian, as his sole surviving heir; that said Eliza R. P. Christian was wholly incompetent as therein alleged and that the said George H. Holt therein referred to was appointed guardian in Hawaii for said incompetent as therein alleged, but respondent is without definite knowledge as to the other allegations in said paragraph contained, and therefore leaves petitioner to her proof thereof.

XV.

Answering the allegations contained in Paragraphs XX, XXI, XXII, and XXIII of said petition, respondent is without knowledge as to the truth thereof, and therefore leaves petitioner to her proof.

Upon the petition filed herein, upon your respondent's answer thereto herein above set forth, and upon such evidence as may be adduced at the hearing thereof, respondent submits himself to the jurisdiction of this Honorable Court, and to such judgment or decree as to this Court may seem just and equitable in the premises.

Dated at Honolulu, T. H. May 18th 1928.

JAMES L. HOLT,

Respondent. [54]

Territory of Hawaii,
City and County of Honolulu—ss.

JAMES L. HOLT, being first duly sworn, on oath deposes and says: that he is the James L. Holt named in and who signed the foregoing answer; that he has read the said answer, knows the contents thereof and that the allegations therein contained are true, save and except as to those matters stated to be alleged on information and belief, and as to them, he believes them to be true.

JAMES L. HOLT.

SUBSCRIBED and SWORN to before me this 18th day of May, 1928.

H. IWANAGA,
Notary Public, First Judicial Circuit, Territory of Hawaii. [55]

[Title of Court and Cause.]

DEMURRER OF RESPONDENT WAIALUA AGRICULTURAL COMPANY, LIMITED.

Filed at 3:10 o'clock p. m. Jun. 12, 1928. A. E. Restarick, Clerk. [56]

Now comes the respondent WAIALUA AGRICULTURAL COMPANY, LIMITED, by its attorneys Robertson & Castle, and demurs to the petition in the above entitled matter on the following grounds:

(1) That the petition sets forth no ground of equitable or other relief;

(2) That the petition shows laches on the part of the petitioner sufficient to bar said course of action;

(3) That the *petition that* petitioner is estopped from bringing such action;

(4) That the petition fails to show inadequacy of consideration;

(5) That the petition affirmatively shows that the consideration paid was adequate;

(6) That petitioner does not offer to do equity;

(7) That no facts are alleged sufficient to sustain this cause or any cause in equity. [57]

WHEREFORE said respondent prays that said petition be hence dismissed with its costs herein most wrongfully sustained.

Dated, Honolulu, T. H., June 12, 1928.

WAIALUA AGRICULTURAL
COMPANY, LIMITED,
By ROBERTSON & CASTLE
Its Attorneys.

We hereby certify that the foregoing demurrer is not intended for delay.

ROBERTSON & CASTLE
By A. L. CASTLE

Receipt of a copy of the foregoing demurrer this 12th day of June, 1928, is hereby acknowledged.

ULRICH & HITE
Attorneys for Petitioner. [58]

[Title of Court and Cause.]

DECISION ON DEMURRER.

Filed at 8:25 o'clock a. m. June 22, 1928. D. K. Sherwood, Clerk. [59]

In this proceeding the petitioner as Guardian of an alleged incompetent person sets forth that the ward has at all time been mentally incompetent to enter into a valid contract of any kind; that the ward, while so incompetent, in the year 1910 was entitled to an interest in expectancy in real estate located in the Territory of Hawaii; that the respondent, Waialua Agricultural Company, Ltd., attempted through its agents and servants to buy this interest in expectancy; that this interest would vest in fee upon the death of the then life tenant who was seventy-one years of age, the alleged incompetent person being then twenty-four years of age; that her interest in expectancy was, in 1910, of the value of $300,000.00 and upwards; that only $30,000.00 was paid in a manner, and to persons, unknown to present petitioner for the purpose of obtaining a [60] conveyance of the incompetent's interest; that the agents of the respondent corporation well knew the fact of the then incompetency of the petitioner's present ward; that the agents of the respondent corporation, to cover up the true facts, represented themselves as acting for a relative of the incompetent person whereas in truth and in fact they were representing the respondent corporation; that said agent or agents were then

and there fully aware of the mental incompetency of the ward of petitioner; that said agent falsely represented the value of said interest; that no person other than the incompetent executed said document on behalf of said incompetent; that the life tenant died on April 10th, 1922, leaving said incompetent person as his sole heir at which time said interest in expectancy vested in fee; and that said respondent corporation has continued to use and occupy the land without right and without accounting for the use thereof. It is further alleged in the petition that the reasonable rental for the use and occupancy of said interest in said land is greatly in excess of the amount of $30,000.00 plus interest and said petitioner is ready and willing to do equity in connection with the return or credit of said $30,000.00 plus interest or such part thereof as may be found equitably due to the respondent, if any.

In connection with the law as to the relief, if any, to be given against executed contracts where one of the parties is alleged to have been insane at the time of the execution of the contract, the authorities are col- [61] lected in 32—C. J., page 734, 737 and 747. On page 734, note 56 (A) is quoted the statement of the rule by Baron Pollock:

> "We are not disposed to lay down so general a proposition as that all executed contracts bona fide entered into must be taken as valid though one of the parties be of unsound mind. We think, however, that when a person

apparently of sound mind, and not known to be otherwise, enters into a contract for the purchase of property, which is fair and bona fide, and which is executed and completed, and the property, the subject-matter of the contract, has been paid for and fully enjoyed, and cannot be restored so as to put the parties in statu quo, such contract cannot afterwards be set aside by the alleged lunatic or those who represent him".

Cited, Scott v. Hay, 90 Minn. 304, 313; 97 N. W. 106.

In the instant case, the petitioner affirmatively alleges that the alleged incompetent was obviously incompetent; that the respondent's agent was fully aware of the incompetency; that the transaction was not fair nor bona fide; that the price was wholly inadequate; that the real estate sold is occupied and used by the respondent who has succeeded as the formal legal grantee and who always was the party to be benefited by the alleged illegal transaction and that the parties can be put in an equitable position substantially in statu quo by a proper account at the present time. Hence, in connection with the rule cited [62] from Baron Pollock's language, the petitioner herein has set up an allegation of fact exactly the converse of the situation which would not be interfered with by Baron Pollock's rule.

It is also stated on page 735 of 32—C. J., viz:

> "The right to avoid a voidable contract may be exercised where all the parties thereto can be placed in statu quo and the good faith of the sane party will not prevent its avoidance. The transaction may be avoided when it is accompanied with inequitable incidents. If the sane party knew of the other's insanity, or if the circumstances were such that as a reasonable and prudent person he should have known it, the contract may be avoided".

The language and the authorities cited in connection with it, all deal with the subject of avoiding an executed contract.

Under the demurrer of the respondents, Waialua Agricultural Company, Ltd., the Court finds that the allegations of the bill are sufficiently set out to give jurisdiction and the demurrer is therefore overruled with leave to said respondents to file answer on or before July 16th, 1928.

Dated, Honolulu, T. H., June 22, 1928.

[Seal] ALBERT M. CRISTY
Second Judge, First Circuit
Court, Territory of Hawaii. [63]

[Title of Court and Cause.]

ANSWER OF WAIALUA AGRICULTURAL COMPANY, LIMITED.

Filed at 2:30 o'clock p. m. July 16, 1928. John Lee Kwai, Clerk. [64]

Now comes WAIALUA AGRICULTURAL COMPANY, LIMITED, one of the respondents herein, and for answer to the petition of Eliza R. P. Christian, an alleged incompetent person suing by George H. Holt, her alleged guardian, denies each and every allegation of said petition, excepting as hereinafter admitted, qualified or explained, and except in so far as so admitted, qualified or explained, and for specific answer says:

1.

That it denies the allegations of Paragraph I.

2.

That it admits the allegations of Paragraphs II, III, IV, V and VI, except that the area of L. C. A. 7713 is 12,256.541 acres instead of 12,237 acres as alleged, and the area of [65] Grant 973 is 1902 acres instead of 1942 acres as alleged.

3.

That it denies the allegations of Paragraph VII of said petition, and further answering thereunto says that said Eliza R. P. Christian, during all the transactions referred to in said petition was legally

competent to look after her own interests and to make conveyances of her property with full knowledge of the purpose and effect thereof.

4.

That it admits the allegations of Paragraph VIII save and except those allegations that it did undertake and enter upon and carry through the negotiations and transactions more fully described elsewhere in said complaint and in the manner therein described.

5.

That in reply to Paragraph IX it denies the allegations thereof except as expressly admitted but admits that said Eliza R. P. Christian had lived in the home of said Anne Holt Kentwell for many years; that at said time respondent James L. Holt was a resident of Honolulu, Hawaii, and was on friendly terms with and related to said Anne Holt Kentwell and said Eliza R. P. Christian; that the said Eliza was the only child and sole heir in expectancy of her father, John Dominis Holt, and that said John Dominis Holt was a man approximately seventy-one years of age.

6.

That it denies all of the allegations of Paragraph X but admits and alleges that in the purchase of said Eliza's [66] interest it was represented by the law firm of Castle & Withington of Honolulu; that it, through its agents, entered into an arrangement with said James L. Holt, at his suggestion and at

his request, for the acquiring of a two-thirds interest in said lands, both in praesenti and in expectancy, including the share and expectancy of said Eliza R. P. Christian, and the interest owned by said James L. Holt, and understood that said James L. Holt would, and did in order to convey such interest, secure the conveyance of the interest of said Eliza R. P. Christian and said Anne Holt Kentwell to him so that said interest might be united with those which he had acquired from his father, J. R. Holt, his uncle J. D. Holt, and his brother Robert Holt, which latter interests were then held in trust for said James L. Holt by one John F. Colburn, together with his own interest; that the fact that the said James L. Holt was dealing with the respondent Waialua Agricultural Company, Limited, through its agents, was well known to said Eliza R. P. Christian, said Anne Holt Kentwell and John Dominis Holt, and the fact that said James L. Holt could not hope to purchase the interests of said Eliza R. P. Christian and said Anne Holt Kentwell except upon the advancing of moneys by said Waialua Agricultural Company, Limited, was perfectly understood by said Eliza R. P. Christian, said Anne Holt Kentwell and said John Dominis Holt, and fully approved by them.

7.

In answer to Paragraph XI it denies the allegations thereof, but says that David L. Withington did proceed to England to secure the conveyance of the interests of said Eliza R. P. Christian and

said Anne Holt Kentwell and did [67] represent the respondent Waialua Agricultural Company as well as said James L. Holt, and further says that when said David L. Withington went to England all terms of the agreement to convey said property and/or interests had been settled and understood by the parties to said conveyance and that it was well understood by all parties thereto that said David L. Withington represented both the respondent Waialua Agricultural Company, Limited, and said James L. Holt.

8.

In reply to Paragraph XII it denies all the allegations thereof except that it says that said David L. Withington did go to England and did meet said Anne Holt Kentwell, together with the other members of her household, including said Eliza R. P. Christian and said John Dominis Holt; that said David L. Withington did have opportunity to observe and did observe the mental condition of said Eliza R. P. Christian and was convinced and knew that she was legally capable of handling her business affairs and of making conveyances including the conveyance in this proceeding with full knowledge of their purpose and effect.

9.

In answer to Paragraph XIII it denies each and every allegation thereof except as herein expressly admitted; that it says that the deed, a copy of which is attached to the petition herein and marked Exhibit B and made a part thereof, was duly and

knowingly executed by all the parties to the same with full knowledge of the facts for an adequate consideration; that all said parties were competent to contract or to convey land and/or interests therein, and that said deed [68] having been duly executed and acknowledged was duly recorded in the Hawaiian Registry of Conveyances at set forth in said petition.

10.

In answer to Paragraph XIV it denies each and every of the allegations thereof, save and except that it admits that it rendered an account to said James L. Holt, paid to Eliza R. P. Christian the sum of $30,000.00 on behalf of said James L. Holt, paid to Anne Holt Kentwell the sum of $5,000.00 on behalf of said James L. Holt, and expended the sum of $110.32 in miscellaneous expenses.

11.

In answer to Paragraph XV it denies the allegations thereof and alleges the facts to be that in conformity with the agreement theretofore reached between the parties and the respondent, Waialua Agricultural Company, Limited, through its agents, said respondent, through its agents, paid the sum of $120,000.00 for a two thirds undivided interest in fee in said lands, including the one-third interest of James L. Holt, the life estate of John Dominis Holt, the contingent interest of Eliza R. P. Christian, the interest of Robert Holt, the interest of John F. Colburn, and the claimed interest of Anne Holt Kentwell.

12.

That answering Paragraph XVI it admits that said William R. Castle did continue to hold in trust for the respondent Waialua Agricultural Company, Limited, all the rights covered by said deed of May 2, 1910, and that on May 17, 1920, said rights were conveyed to others with the [69] knowledge of said Waialua Agricultural Company, Limited, but not at its instigation and request.

13.

Answering Paragraph XVII it denies the allegations therein contained, except that it admits the execution of the deed dated May 17, 1920, and alleges that the consideration therein mentioned was actually paid for in cash by the beneficiaries of said Helemano Real Estate Trust and said interests were actually owned by said beneficiaries;

14.

Answering Paragraph XVIII it denies the allegations thereof except that it admits that on July 20, 1921, by instrument in writing the Trustees of said Helemano Real Estate Trust did convey the properties mentioned in said instrument directly to the respondent Waialua Agricultural Company on the payment to said Trustees for the beneficiaries of said trust and in proportion to their respective interests the full consideration mentioned in said instrument.

15.

That it denies all the allegations in Paragraph XIX except that John Dominis Holt died on April 10, 1922, and left as his sole surviving heir said Eliza R. P. Christian; that it admits that since the death of said John Dominis Holt it has claimed, and now is the owner of, the property described in the petition herein by virtue of the deeds referred to in said petition as Exhibits B, C, D and E, but denies that such claim and ownership is wrongful or without right. [70]

16.

That it denies each and every allegation of Paragraphs XX and XXI.

17.

In answer to Paragraph XXII respondent admits that said George H. Holt, purporting to account as guardian for said Eliza R. P. Christian, did purport to disaffirm said deed of May 2, 1910, but denies that said purported disaffirmance was effective, or that it was made within a time sufficiently reasonable to give it effect if there had been no other defects attaching to such purported disaffirmance, and specifically denies that any tender of any moneys paid to said Eliza R. P. Christian and/or Anne Holt Kentwell has ever been made to this respondent.

18.

In answer to Paragraph XXIII of said petition it denies the allegations thereof.

19.

And it specifically denies that said Eliza R. P. Christian or George H. Holt, her purported guardian on her behalf, has any interest in the property described in said petition or in the rents, profits, or use thereof.

WHEREFORE respondent, Waialua Agricultural Company, Limited prays that the petition herein be dismissed, and for its costs herein most wrongfully sustained.

DATED, Honolulu, T. H., July 16, 1928.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
By ROBERTSON & CASTLE
FRANK E. THOMPSON
MONTGOMERY E. WINN
MARGUERITE K. ASHFORD
Its Attorneys. [71]

Receipt of a copy acknowledged this 16th day of July 1928.

ULRICH & HITE CMH
Attorneys for Petitioner. [72]

[Title of Court and Cause.]

REPLICATION

Filed at 8:30 o'clock A. M. July 18, 1928, John Lee Kwai, Clerk. [73]

Comes now ELIZA R. P. CHRISTIAN, an incompetent person, by George H. Holt, her Guardian,

and, reserving unto herself all manner of exceptions to and without waiving her rights to take advantage of the manifold insufficiencies and errors in the answer of Waialua Agricultural Company, Ltd., respondent herein, by way of replication doth say:

I.

That she admits the allegations of Paragraph 2 of respondent's bill, save that she leaves respondent to its proof with respect to the acreage of the land therein described.

II.

That she denies the allegation contained and set forth in Paragraph 6 of said answer to the effect that the fact that James L. Holt was dealing with said respondent, through its agents, was well known or could have been well known to said petitioner, by reason of her mental incompetency as in said petition set forth, and petitioner further denies that the fact [74] that said James L. Holt could not hope to purchase the interests of said incompetent except upon the advancing of moneys by said respondent was perfectly understood or could have been in any wise understood by said incompetent, and denies that Anne Holt Kentwell and John D. Holt so understood said alleged facts, or that they fully approved of the same.

III.

That petitioner denies the allegation contained in paragraph 7 of said answer that David Withington did represent the said James L. Holt in England or that all of the terms of the agreement therein

referred to were known or understood by all of the parties to said conveyance therein referred to, and says that petitioner could not possibly have understood the same even had such been the fact, owing to her mental incompetency aforesaid.

IV.

That petitioner denies the allegation contained in Paragraph 8 of said answer that said David Withington knew petitioner was legally capable of handling her business affairs and of making conveyances with full knowledge of their purpose and effect.

V.

Petitioner denies that said petitioner knowingly executed the conveyance being Exhibit "B", all as set forth in Paragraph 9 of said answer, or with full knowledge of the facts for an adequate consideration, and again denies that said petitioner was competent to contract or to convey lands and/or interests therein. [75]

VI.

Petitioner realleges, reavers, and reasserts, except as herein expressly reserved, all of the allegations and assertions contained and set forth in her petition herein, and denies the allegations of said Answer.

WHEREFORE it is prayed as in said petition set forth.

Dated Honolulu, T. H., this 17th day of July, 1928.

ELIZA R. P. CHRISTIAN, an incompetent person, by GEORGE H. HOLT, her Guardian,
By ULRICH & HITE
By CHAS. M. HITE
Her Attorneys.

Territory of Hawaii
City and County of Honolulu—ss.

CHAS. M. HITE, being first duly sworn, on oath deposes and says: That he is of counsel for petitioner hereinbefore named; that he has express authority to sign this verification for and on behalf of said petitioner; that George H. Holt, Guardian of Eliza R. P. Christian, an incompetent person, is ill, confined to his bed and unable to make this verification; that affiant has read the foregoing replication by him subscribed on behalf of said petitioner, knows the contents thereof and the same are true to the best of his knowledge and belief.

CHAS. M. HITE

Subscribed and sworn to before me this 17th day of July, 1928.

[Seal] MARION D. RAAB
Notary Public First Judicial Circuit, Territory of Hawaii. [76]

Certify served on respondent on to-wit July 18, 1928, by delivering copies hereof to attorneys named for said respondent.

CHAS M. HITE. [77]

[Title of Court and Cause.]

REPLICATION.

Filed at 2:05 o'clock p. m. July 20, 1928. John Lee Kwai, Clerk. [78]

Comes now Eliza R. P. Christian, an incompetent, by George H. Holt, her guardian, and by way of replication to the answer of James L. Holt, in the above entitled court and cause, doth say, that said answer is insufficient and that said petitioner doth re-allege, re-aver and re-affirm all the matters and things set forth and contained in her appeal herein.

Dated Honolulu, T. H. this 20th day of July, 1928.

ELIZA R. P. CHRISTIAN, an incompetent person, by GEORGE H. HOLT, her Guardian,
By ULRICH & HITE
By CHAS. M. HITE
Her Attorneys. [79]

[Title of Court and Cause.]

NOTICE TO PRODUCE.

TO: ELIZA R. P. CHRISTIAN, an alleged incompetent person by George H. Holt, her guardian, and

TO: Messrs. ULRICH & HITE, her attorneys:

YOU ARE HEREBY NOTIFIED that defendant will ask you to produce at the trial of the above

entitled action, a certain will executed by Eliza R. P. Christian during the year 1906, together with any other wills executed by her.

Dated, New York, December 4, 1928.

ROBERTSON & CASTLE
GEORGE S. LEISURE
Attorneys for Respondent
Waialua Agricultural Co. Ltd.

Service by copy is hereby admitted this 4th day of December, 1928.

ULRICH & HITE
Attorneys for Petitioner.

Filed at 9:55 o'clock a. m. Jan. 3, 1929. D. K. Sherwood, Clerk. [80]

[Title of Court and Cause.]

AMENDED PETITION.

EXHIBITS "A", "B", "C", "D" and "E"

Filed at 1:55 oclock p. m. Mar. 5, 1929. A. E. Restarick, Clerk. [81]

Comes now ELIZA R. P. CHRISTIAN, an incompetent person, by GEORGE H. HOLT, her Guardian, by her attorneys, ULRICH & HITE, and as grounds for the relief herein prayed, shows unto this Honorable Court as follows:

I.

That the said George H. Holt, was upon the first day of February, 1927, by order and decree duly entered in the above-entitled Court, appointed Guardian in Hawaii of the estate of said Eliza R. P. Christian, resident in England, and found and adjudged to be an incompetent person, and that upon the filing of a bond in the amount of $15,000.00, he, the said George H. Holt, did qualify as such Guardian and ever since has been and now is the duly acting and qualified guardian of said incompetent person.

II.

That respondent, Waialua Agricultural Company, Limited, [82] is now and at all times hereinafter mentioned has been a corporation duly organized and existing under and pursuant to the provisions of the laws of the Territory of Hawaii, with its principal place of business in Honolulu in said Territory.

III.

That the respondent James L. Holt is a resident of the City and County of Honolulu, Territory of Hawaii, and is a son of James R. Holt and grandson of Robert William Holt, all as more fully hereinafter appears.

IV.

That petitioner, Eliza R. P. Christian, formerly Eliza R. P. Holt, was and is the daughter and sole heir of John Dominis Holt, now deceased, and that the said John Dominis Holt was a son of Robert

William Holt, said Robert William Holt having been a resident of the Territory of Hawaii, and the owner of large properties in said Territory, who died in the year 1862.

V.

That upon his death in the year 1862 as aforesaid, said Robert William Holt, seized of considerable properties as aforesaid, left a will wherein and whereby, among other things, it was provided that the bulk of his estate should be divided into four equal parts, one part of which to go to and become the property of his daughter, Elizabeth M. Aldrich, the remaining three-quarters thereof to be held in trust to pay the income from equal and undivided thirds thereof to each of his sons, Owen J. Holt, James R. Holt, and John Dominis Holt, for their respective lives, with remainder over in fee as to each undivided one-third [83] to the heirs at law of the said three sons as they respectively should die, a copy of which said last will and testament of Robert William Holt is hereto annexed, marked Exhibit "A", and by reference made a part hereof. That after the distribution of one-fourth of said estate to said Elizabeth M. Aldrich, daughter of testator, as aforesaid, and after the payment of all debts and specific legacies, there was in said estate and undistributed the following pieces and parcels of real property, situate, lying and being in the district of Waialua, Island of Oahu, Territory of Hawaii, said property being more particularly described as follows:

1. Ahupaa of Paalaa, being apana 34, L. C. A. 7713, Royal Patent 4475, containing an area of 12,237 acres;

2. The lands described in Royal Patent 973 to Robinson et al, containing an area of 1,942 acres;

3. The lands described in Royal Patent 431 to Kanohanui, containing an area of 100 acres;

4. The lands described in Royal Patent 235 to Topliff et al, containing an area of 36 acres;

5. The lands described in Royal Patent 238 to Anderson, containing an area of 25.8 acres;

6. All Kuleanas or grants lying within the above described land.

VI.

That under and pursuant to the provisions of said will of Robert William Holt, his son, John Dominis Holt, became and was entitled to the income for life from an undivided one-third of all of the above described lands, and that Eliza R. P. Christian, the only child and sole heir at law of her father, [84] the said John Dominis Holt, as aforesaid, became and was entitled to accede to and become the owner in fee simple of an undivided one-third interest in all of said lands upon the death of her said father, and subject only to her survival of him.

VII.

That the said Eliza R. P. Christian is, was, and at all times hereinafter mentioned has been, insane and mentally incompetent.

VIII.

That for many years prior to 1910, and prior to the happening of the events in that year hereinafter described, the respondent, Waialua Agricultural Company, Ltd., had used and occupied large portions of the above described lands as a tenant under leaseholds executed to it by persons holding the legal estate in trust pending the death of the life tenants, as aforesaid, AND AS THE PURCHASER OF CERTAIN UNDIVIDED INTERESTS IN SAID LANDS, on a considerable portion of which lands said respondent corporation had planted and grown sugar cane in the course of its business in the cultivation and production of sugar, AND OTHER PORTIONS OF WHICH IT HAD SUBLEASED TO OTHERS FOR THE GROWTH AND CULTIVATION OF PINEAPPLES, AND IN THIS CONNECTION PETITIONER PARTICULARLY ALLEGES THAT BY INSTRUMENT DATED MARCH 17, 1905, EXECUTED BY CERTAIN PERSONS OTHER THAN THE SAID ELIZA CHRISTIAN, AS LESSORS, SAID RESPONDENT CORPORATION DID SECURE A LEASE ON SAID PREMISES FOR THE TERM OF TWENTY-FIVE YEARS AT A CERTAIN RENTAL THEREIN SPECIFIED, AND THAT THE SIGNATURE OF SAID ELIZA R. P. CHRISTIAN RECITED THEREIN AS ONE ASSENTING TO SAID LEASE WAS PROCURED, BUT IN THIS CONNECTION PETITIONER AL-

LEGES [85] THAT SAID ELIZA R. P. CHRISTIAN WAS AT SAID TIME, AS AT ALL OTHER TIMES HEREIN MENTIONED, WHOLLY AND UTTERLY INCOMPETENT TO BIND HERSELF BY EXECUTING SAID DOCUMENT, AND FURTHERMORE THAT NEITHER SHE NOR ANYONE ACTING ON HER BEHALF RECEIVED ANY CONSIDERATION WHATEVER FOR THE EXECUTION OF SAID DOCUMENT AS AFORESAID, SO THAT THE CONSIDERATION LATER PAID, IN THE MANNER HEREINAFTER DESCRIBED, IN THE ATTEMPTED PURCHASE OF THE INTEREST OF SAID ELIZA R. P. CHRISTIAN, AS HEREINAFTER SET FORTH, WAS THE SOLE AND ONLY CONSIDERATION PAID TO ANYONE IN EFFECTING THE TRANSFER TO SAID RESPONDENT CORPORATION, IN THE MANNER SET FORTH, OF THE ENTIRE INTEREST OF THE SAID ELIZA R. P. CHRISTIAN IN SAID LANDS UNENCUMBERED BY THE BURDEN OF SAID LEASE OR OF ANY LEASE, AND PETITIONER FURTHER ALLEGES IN THIS CONNECTION THAT NO RENTAL HAS EVER BEEN PAID TO THE SAID ELIZA R. P. CHRISTIAN OR TO ANY PERSON ACTING ON HER BEHALF WITH RESPECT TO OR UNDER SAID LEASE AND THAT SAID LEASE HAS BEEN LONG SINCE ABANDONED BY SAID RESPONDENT CORPORA-

TION, AND THAT NO CLAIM OF RIGHT OF ANY KIND WITH RESPECT TO SAID ELIZA R. P. CHRISTIAN OR HER INTEREST IN SAID LANDS HAS BEEN MADE OR IS BEING MADE UNDER OR BY VIRTUE OF SAID LEASE, SO THAT NOTWITHSTANDING THAT SAID ELIZA R. P. CHRISTIAN WAS *UNWHOLLY* AND UTTERLY INCOMPETENT TO EXECUTE OR TO ASSENT TO SAID LEASE AND NOTWITHSTANDING THAT THE PROCURING OF THE SIGNATURE OF THE SAID ELIZA R. P. CHRISTIAN TO SAID LEASE WAS FOR OTHER UNEQUITABLE, RELIEF IN EQUITY AGAINST SAID LEASE NEED NOT BE AND CANNOT BE HEREIN PRAYED FOR, RESPONDENT'S SOLE CLAIM OF RIGHT TO THE SAID LANDS BEING NOW BASED UPON THE SAID DEED OF MAY 2, 1910, HEREINAFTER REFERRED TO, UNDER WHICH DEED SAID RESPONDENT NOW CLAIMS THE ENTIRE RIGHT, TITLE AND INTEREST OF PETITIONER TO SAID LANDS, CLAIMING TO HAVE ACQUIRED [86] SAID RIGHT AND TITLE FREE OF ENCUMBRANCE IN CONSIDERATION OF NO PAYMENT OR CONSIDERATION OF ANY KIND MOVING TO SAID ELIZA R. P. CHRISTIAN OR TO ANY ONE ON HER BEHALF OTHER THAN AS HEREIN-

AFTER INDICATED. Petitioner alleges upon information and belief, that in the year 1910, becoming desirous of acquiring said lands in fee simple, and more particularly of acquiring the undivided one-third in said land as to which the said John Dominis Holt was entitled to the income for life and as to which the said Eliza R. P. Christian would be entitled to the fee upon his death, the said respondent corporation did undertake, enter upon and carry through the negotiations and transactions more fully hereinafter described.

IX.

That in said year 1910 the said Eliza R. P. Christian was wholly incompetent mentally as aforesaid, and was unable to care for herself or her affairs, and was then residing in Oxford, England, with her cousin, Anne Holt Kentwell, in whose care she had been for many years; THAT THE SAID ELIZA R. P. CHRISTIAN WAS THEN AND THERE COMPLETELY UNDER THE CONTROL OF ONE LAWRENCE KENTWELL, THE HUSBAND OF THE SAID ANNE HOLT KENTWELL; that at said time respondent James L. Holt was residing in Honolulu, Hawaii, and was on friendly terms with AND HAD BEEN IN CORRESPONDENCE WITH THE SAID LAWRENCE KENTWELL; that the said incompetent, the only child and sole heir in expectancy of her father, John Dominis Holt, was of the age of 24 years and, aside from her said mental affliction, was in generally good physical health and condition,

whereas the said John Dominis Holt, upon whose death the vesting of the interest in fee in the said Eliza R. P. Christian alone depended, was a man of 71 years [87] of age; that at said time the interest in expectancy in fee in an undivided one-third of said lands to which said incompetent would be entitled upon the death of her said father, was of the value of upwards of $300,000.00, and that all of the foregoing facts and circumstances were well known to respondent corporation, notwithstanding that the true worth and value of said property, dependent upon circumstances peculiarly within the knowledge of said respondent corporation was unknown to and not disclosed to said LAWRENCE KENTWELL, and was, of course, entirely impossible of being understood by said incompetent, petitioner herein.

X.

Petitioner alleges upon information and belief that thereupon the respondent corporation did employ and retain the law firm of Castle & Withington of Honolulu to represent it and act for it in the matter of procuring the conveyance to it of the socalled Christian interest in said property, and that as a first step in the plan then and thereupon undertaken by said respondent and in or about the months of March or April, 1910, the said James L. Holt was induced to come to and attend certain meetings or conferences held in the office of said attorneys, Messrs. Castle & Withington, in the course of which said James L. Holt was induced to enter into an agreement, portions of which agreement

were reduced to writing and signed by the parties to be bound, W. R. Castle signing as Trustee and acting for and on behalf of said respondent corporation, the substance and effect of which agreement was as follows: That it was agreed in substance that the said James L. Holt, being in the confidence of AND IN CONTACT WITH SAID LAWRENCE KENTWELL, under whose complete [88] influence and control was said incompetent, Eliza R. P. Christian, should endeavor to induce said LAWRENCE KENTWELL to procure the signature of said incompetent to a deed purporting to convey the interest of said incompetent in said land at a cost to respondent corporation not to exceed the sum of $40,000.00, which moneys, it was agreed, were to be furnished by said respondent corporation through its representatives; it being further agreed that, notwithstanding that said James L. Holt was without funds to make said purchase, and notwithstanding that said purchase was to be made for immediate retransferal to said respondent corporation or its represeintatives or appointees in trust, yet that the conveyance, if procured, was to be taken in the name of said James L. Holt; that it was further agreed that upon the procuring of said conveyance said James L. Holt was then and thereupon to execute his conveyance of the interest to be so acquired from said Eliza R. P. Christian, together with his own similar and equal interest in expectancy in said lands as the sole heir at law of James R. Holt, and that he was

to receive from said respondent as consideration for his services in the premises and for his interest in said property the sum of $60,000.00; a further sum of $20,000.00 to be paid to one John F. Colburn, at that time the assignee and holder of the life interests in said property of John Dominis Holt and James R. Holt, and trustee for James L. Holt for certain purposes, making a total contemplated expenditure to said corporation of $120,000.00 for petitioner's interest as well as for the other interest above indicated in said lands.

XI.

Petitioner alleges upon information and belief that then and thereupon said James L. Holt, pursuant to said agreement, [89] did endeavor to ascertain from England whether or not, if attempted said plan might be reasonably expected to be successful, and having, as it was thought, ascertained that such was the fact, David Withington, Esquire, a member of said law firm of Castle & Withington, representing respondent corporation in the premises as aforesaid, who was then in the CITY OF BOSTON, STATE OF MASSACHUSETTS, was instructed by said respondent corporation to proceed forthwith to England and there to appear, ostensibly as attorney for James L. Holt, but in fact acting in the interests of respondent corporation as aforesaid, in an endeavor to procure through said LAWRENCE KENTWELL, or in such manner as could be done, a conveyance of the said Christian interes at an ex-

penditure to said corporation of not to exceed $40,000.00.

XII.

Petitioner alleges upon information and belief that thereupon said David Withington, Esq., did forthwith proceed to England, and did there call upon said LAWRENCE KENTWELL in whose home was the said incompetent, Eliza R. P. Christian; that the said David Withington, representing said respondent corporation as aforesaid, though ostensibly representing said respondent James L. Holt as aforesaid, was then and there given and did have ample opportunity for ascertaining for himself and those whom he represented the fact of said incompetency. Upon information and belief petitioner further alleges that said David Withington, as such attorney and representative, was fully aware of said mental incompetency of said Eliza R. P. Christian at the time of the happening of all the events which there transpired as herein described. [90]

XIII.

Plaintiff alleges upon information and belief that the said David Withington, acting for respondent corporation as aforesaid, did then and there represent to LAWRENCE KENTWELL as well as to said incompetent, Eliza R. P. Christian, who was, however, incapable of understanding said representation, that the interest of said Eliza R. P. Christian was of a value of not more than $30,000.00, although in truth and in fact the value of said inter-

est was in an amount of many times that sum, and did persuade and induce said LAWRENCE KENTWELL to assist in procuring the signature of said incompetent to a deed purporting to convey the interest of said incompetent to the respondent James L. Holt as aforesaid, and did succeed in procuring the signature of said incompetent to said deed, said signature being affixed by said incompetent without any knowledge or understanding of the meaning of said document or of said signature; and that in said manner, although petitioner was wholly incompetent as aforesaid, her signature was procured to said document, and that said document was signed by no person for or on her behalf as her guardian or otherwise, all of which was well known to defendant corporation, and that said document was signed on, to-wit, May 2, 1910, in the manner aforesaid by said incompetent and by said Anne Holt Kentwell, purporting to convey her interest in the said land, and by John Dominis Holt, notwithstanding that all of his interest had theretofore been alienated and assigned away; that said document was subsequently returned to Hawaii and was recorded in the Office of the Registrar of Conveyances on, to wit, the 23rd day of June, 1910, in Liber 337, page 75, of the records of said office, and that a true and [91] correct copy thereof is hereto annexed, by reference made a part hereof, and marked Exhibit "B".

XIV.

Petitioner alleges upon information and belief that thereafter the said respondent corporation,

through its agents and representatives, did represent to the respondent James L. Holt that it had disbursed in procuring the execution to said James L. Holt of the conveyance hereinabove referred to and marked Exhibit "B", annexed hereto, through the said David Withington in England, the following sums of money, pursuant to the agreement theretofore entered into with said respondent James L. Holt by W. R. Castle as trustee as hereinabove set forth, that is to say:

Stated to have been paid to Eliza R. P. Christian £6,141/5 at $4.88½	$30,000.00
Stated to have been paid to Anne Holt Kentwell £1,023/10/10 at $4.88½	5,000.00
Stated to have been paid by David L. Withington for various incidental expenses £19/15 at $4.88½	92.92
Stated to have been paid by David L. Withington for other incidentals, including present to clerk	17.50
Total	$35,110.32

That petitioner is without information as to the manner of payment of said sum of $30,000.00 stated to have been paid to said Eliza R. P. Christian as aforesaid, or as to what person said moneys were paid, or as to how said moneys were used and applied, save and except that petitioner alleges that said money could not have been paid to and disposed [92] of by said Eliza R. P. Christian, personally, inasmuch as she was wholly and utterly

unable, because of her mental condition, to receive, handle or dispose of moneys, and petitioner further alleges that said sum of $30,000.00 was grossly, utterly, and wholly inadequate as consideration for the interest of said Eliza R. P. Christian, as was well known to said respondent corporation and to its agents and representatives, and that said transaction was unconscionable and inequitable and in fraud of the rights of said incompetent, Eliza R. P. Christian.

XV.

Petitioner alleges upon information and belief that promptly after the return of said deed of May 2, 1910 to Honolulu, and in fact even before said deed had been recorded, and pursuant to the agreement theretofore entered into as aforesaid, said respondent James L. Holt, on to-wit, May 28, 1910, did execute his deed to W. R. Castle as agent and trustee for respondent corporation, purporting to convey, among other things, the one-third interest in said lands of the said incompetent, Eliza R. P. Christian, but that upon the making of said conveyance the said James L. Holt received no money or consideration of any kind for the transfer to said W. R. Castle as trustee of said interest of the said incompetent, Eliza R. P. Christian, theretofore paid for by said respondent corporation as aforesaid, and was paid compensation only for the conveyance of his own interest in said land, also covered by said indenture of May 28, 1910, and for his services in the premises as aforesaid, for which

interest and for which services said James L. Holt was paid the sum of $60,000.00, the balance of the consideration of [93] $120,000.00 recited in said conveyance of May 28, 1910, representing sums alleged to have been disbursed in England and procuring the said indenture of May 2, 1910, and moneys paid to one John F. Colburn appearing as a party to said indenture of May 28, 1910; and that said deed of May 28, 1910 is hereto annexed, by reference made a part hereof, and marked Exhibit "C".

XVI.

That thereafter and for a period of approximately ten years and until May 17, 1920, as petitioner is informed and believes, the said William R. Castle, attorney for said respondent corporation as aforesaid, did continue to hold in trust as aforesaid for said respondent corporation, all rights covered by said deed of May 2, 1910, being Exhibit "B", attached hereto; that at the expiration of said period and on said May 17, 1920, said William R. Castle, trustee as aforesaid, did convey said rights to certain persons as trustees in the premises, as your petitioner is informed and believes and therefore alleges the fact to be, with the knowledge of and at the instigation and request of his beneficiary, said respondent corporation, all as more fully hereinafter set forth.

XVII.

That on May 17, 1920, W. R. Castle, trustee as aforesaid, did convey, among other things, all the

rights covered by said conveyance marked Exhibit "B" attached hereto, and all rights covered by Exhibit "C" attached hereto, to J. R. Galt, A. L. Castle, T. H. Petrie, R. A. Cooke, and R. B. Anderson, as trustees designated and named trustees of the "HELEMANO REAL ESTATE TRUST"; [94] and petitioner alleges upon information and belief that notwithstanding that the sum of $127,912.49 was recited in said conveyance as consideration therefor, $130,000.00 thereof represented and was merely the $120,000.00 theretofore claimed to have been paid for said lands ten years earlier, and recited as consideration in that certain conveyance to W. R. Castle, trustee, hereinabove referred to as Exhibit "C", and that the additional amount of upwards of $7,900.00 represented additional expenses incurred in the premises by the respondent corporation through its representatives, and that no new or independent consideration was furnished by any person or corporation other than respondent corporation, and that said trustees of the said Helemano Real Estate Trust as above mentioned, did thereafter and at all times hold such properties and rights as were conveyed by said indenture of May 17, 1920, in trust for said Waialua Agricultural Company, Limited, respondent herein, as ultimate beneficiary, and that a copy of said indenture of May 17, 1920, conveying said properties and rights to said trustees of said Helemano Real Estate Trust in trust as aforesaid, is hereto attached, by reference made a part hereof, and marked Exhibit "D".

XVIII.

That thereafter said trustees of said Helemano Real Estate Trust continued to hold said properties in trust as aforesaid until July of the year 1921; that on July 9, 1921, the provisions of Section 55 of the Organic Act providing for the government of the Territory of Hawaii, theretofore providing, among other things, that no corporation should acquire or hold real [95] estate in Hawaii in excess of 1,000 acres in area, and that all real estate so acquired or held should escheat to the United States, was amended by the Congress of the United States by repealing and deleting from said Section said provisions thereof, and that immediately thereafter and on July 20, 1921, by instrument in writing of that date, the said trustees of said Helemano Trust did convey all of the aforesaid properties directly to respondent corporation, Waialua Agricultural Company, Limited; and petitioner alleges upon information and belief that, notwithstanding that said conveyance of July 20, 1921 recites a consideration of $128,045.49, said sum represented merely moneys theretofore expended by said corporation as hereinabove indicated for said property, with the small additional expenditure indicated, accruing as incidental to the final conveyance to the ultimate beneficiary, respondent corporation, for whom said properties had been held throughout under various trusts as hereinabove set forth, and petitioner alleges that said respondent corporation took and received said property with full and complete

knowledge of all the matters and things hereinabove set forth, and that the dealings with said property herein indicated to have taken place after the procuring of the deed of May 2, 1910 hereinabove referred to as Exhibit "B", were dealings carried through at the instigation, request and under the direction of respondent corporation, by whose agents and representatives and at whose expense said original conveyance of May 2, 1910 had been procured.

XIX.

Petitioner alleges that on April 10, 1922, John Dominis [96] Holt, father of petitioner and the holder of the life interest intervening prior to the vesting of the rights of said petitioner in the lands referred to, died leaving as his sole surviving heir the said petitioner, Eliza R. P. Christian, and that from and after said day said Eliza R. P. Christian became and was as such heir vested with an estate in fee simple in and to an undivided one-third of all the lands hereinabove described, and all rights of respondent corporation acquired by leases or by other forms of assignment of the interest of the intervening life tenant terminated; but that nevertheless respondent corporation continued thereafter to use and occupy said land without right or authority in the premises, and without accounting to petitioner for the reasonable worth of said right and user. That however, at said time and at all times herein mentioned, said Eliza R. P. Christian was wholly and utterly incompetent mentally, and

unable to act on her own behalf in the premises, and until said George H, Holt was later appointed guardian, as herein set forth, was without any person authorized and qualified to act for her in the premises; and that said respondent corporation has, since the death of said John Dominis Holt, wrongfully and without right or justification claimed to be the owner of petitioner's property by virtue of the deed hereinabove referred to as Exhibit "B", notwithstanding the facts and circumstances incidental to the procuring of said indenture, and notwithstanding the total incapacity of said Eliza Christian to have entered into or bound herself by any such undertaking, and petitioner is wholly and utterly without any or adequate relief in the premises, otherwise than through the order and [97] decree of this Court, cancelling said deed as to her and granting further relief as herein otherwise prayed for.

XX.

That since the appointment and qualification of said George H. Holt as guardian of the estate of the said Eliza R. P. Christian, an incompetent, all due diligence has been used in promptly investigating all matters and things having to do with the rights of the said incompetent, and with all due diligence a careful and searching investigation has been carried through, which has disclosed the facts and circumstances hereinabove set forth, which has occupied the time which has intervened since said appointment, and that promptly upon having

completed said investigation and ascertained said facts and circumstances, said incompetent, acting through her said guardian, made due and timely demand upon the respondent corporation that it do account to the said Eliza R. P. Christian, incompetent as aforesaid, for the use of her lands since the death of the said John Dominis Holt, and that it otherwise do justice in the premises, and that upon refusal of said respondent to comply with said demand within a reasonable time, petitioner, by her said guardian, is promptly filing this her complaint herein.

XXI.

Petitioner alleges that the value of the lawful right and interest of the said Eliza R. P. Christian in and to the lands herein referred to and now held and claimed by said respondent corporation is in an amount greatly in excess of a million dollars, and that the reasonable rental for the use and [98] occupancy of said interest in said land during the period of approximately six years which has intervened since the death of the said John Dominis Holt, and properly payable to petitioner herein, is in an amount of many times the sum of $30,000.00, with interest since May 2, 1910; AND THAT THE PROPERTIES WHICH WOULD BE RESTORED TO PETITIONER UNDER THE DECREE PRAYED FOR HEREIN AND THE MONEYS WHICH WOULD BE PAYABLE TO HER ON ACCOUNTING AS HEREIN PRAYED FOR WOULD BE AND ARE IN VALUE

GREATLY IN EXCESS OF SAID SUM OF $30,000.00 TOGETHER WITH INTEREST SINCE May 2, 1910, AND TOGETHER WITH ANY AND ALL MONEYS EXPENDED IN THE PERMANENT IMPROVEMENT OF SAID PROPERTY SINCE THE VESTING OF PETITIONER'S INTEREST THEREIN OR FOR THAT MATTER SINCE May 2, 1910; and petitioner, that justice full and complete may be done in the premises in such manner as to the court may seem just, equitable, and in accord with the evidence to be adduced herein, does hereby offer to allow to respondent corporation a credit in the amount of $30,000.00 with interest from May 2, 1910 to date, AND SUCH SUM OR SUMS, IF ANY, AS THIS COURT MAY FIND SHOULD REASONABLY BE RESTORED TO DEFENDANT AS MONEYS EXPENDED IN THE PERMANENT IMPROVEMENT OF SAID PROPERTIES, in the event that the court finds from the evidence that in equity, such should be done, such credit to be allowed in the accounting for rentals herein prayed for, AND/OR AS A CHARGE AGAINST THE PROPERTIES, RESTORATION OF WHICH TO PETITIONER IS HEREIN PRAYED FOR, or in such other manner OR TO SUCH OTHER EXTENT as to this Court may seem just and proper.

XXII.

Petitioner alleges that after the appointment of the [99] said George H. Holt as guardian for said

incompetent, and promptly upon the ascertaining of the facts and circumstances hereinabove set forth, petitioner, acting by her said guardian, did disaffirm the said deed of conveyance of May 2, 1910;

And petitioner, proceeding by her said guardian herein, without admitting any force or effect in said conveyance, does hereby disaffirm said deed and said transaction, AND DOES LIKEWISE DISAFFIRM THE ASSENT OF SAID INCOMPETENT PROCURED TO SAID LEASE OF MARCH 17, 1905, LONG SINCE IN FACT ABANDONED AND OF NO EFFECT, AS HEREINBEFORE SET FORTH, and in the settlement to be had herein does tender back any and all consideration which may be shown to have been paid as consideration for the SAID conveyance of her said interest, together with the interest thereon, TOGETHER WITH MONEYS EXPENDED IN THE PERMANENT IMPROVEMENT OF SAID PROPERTY, in the event and to the extent that this Court may find herein that repayment should be made in equity and in justice.

XXIII.

That petitioner has no adequate and complete remedy at law.

WHEREFORE PETITIONER PRAYS:

1. That respondents above named and each of them be cited to appear and make answer unto petitioner's foregoing Petition in the manner and form provided by law, answer under oath being hereby expressly waived;

2. That it be ordered and decreed that respondents above named surrender up for cancellation that certain deed dated May 2, 1910, a copy of which is hereto annexed and marked Ex- [100] hibit "B", and that said deed be cancelled and annulled as to said Eliza R. P. Christian by order of this Court and as to her decree to be of no further force or effect.

3. That it be ordered and decreed that respondent Waialua Agricultural Company, Limited, do fully and completely account to petitioner of and concerning the reasonable and full rental of the undivided one-third interest in fee of petitioner in and to all of the lands hereinabove described, from April 10, 1922 to and including the date of judgment entered herein, together with interest thereon, and that said respondent Waialua Agricultural Company, Limited, do pay to petitioner a sum of money which shall be and represent the aggregate of rentals accrued and accruing on said lands since said April 10, 1922, to and including the date of judgment entered herein, together with interest thereon from the dates upon which said rentals shall have accrued, credit to be given to said Waialua Agricultural Company, Limited, in such accounting for such sum or sums, if any, as to this Court may seem just and proper.

4. That it be ordered and decreed that respondent Waialua Agricultural Company, Limited, make and execute a good and sufficient deed of conveyance, conveying and releasing to petitioner an

undivided one-third interest in and to all of the lands hereinabove described.

5. And that the Court do grant such other and further relief as to the Court may seem just and equitable, to the end that complete justice and equity may be done in the premises, and that petitioner do have her costs of suit incurred herein.

Dated: Honolulu, T. H., March 5th, 1929. [101]

ELIZA R. P. CHRISTIAN,
An incompetent person, by
GEORGE H. HOLT,
Her Guardian.
By ULRICH & HITE.
By BARRY S. ULRICH,
Her Attorneys.

Territory of Hawaii
City and County of Honolulu.—ss.

GEORGE H. HOLT, being first duly sworn, deposes and says: That he is the George H. Holt named as guardian of ELIZA R. P. CHRISTIAN, an incompetent person, petitioner herein, and that by him as such guardian said incompetent makes said Amended Petition herein; that he has read said foregoing Amended Petition, knows the contents thereof, and that the allegations therein contained are true, save as to those matters stated to be alleged upon information and belief, and that as to them, he believes them to be true.

GEORGE H. HOLT,
Guardian of Eliza R. P. Christian,
an incompetent person.

Subscribed and sworn to before me this 5th day of March, 1929.

[Seal] D. K. SHERWOOD,
First Judicial Circuit, Territory of Hawaii.
Clerk, Circuit Court. [102]

[Title of Court and Cause.]

ANSWER OF WAIALUA AGRICULTURAL COMPANY, LIMITED TO AMENDED COMPLAINT.

Filed at 2:03 o'clock p. m., Mar. 8, 1929. D. K. Sherwood, Clerk. [103]

Now comes WAIALUA AGRICULTURAL COMPANY, LIMITED, one of the respondents herein, and for answer to the petition of Eliza R. P. Christian, an alleged incompetent person suing by George H. Holt, her alleged guardian, denies each and every allegation of said petition, excepting as hereinafter admitted, qualified or explained, and except in so far as so admitted, qualified or explained, and for specific answer says:

1.

That it denies the allegations of Paragraph I.

2.

That it admits the allegations of Paragraphs II, III, IV, V and VI, except that the land described includes only a portion of Ahupuaa of Paalaa, being a portion of Apana 34, L. C. A. 7713, R. P. 4475

containing 12,018.44 acres, and a portion of Grant 973 which contains 1902 acres instead of 1942 acres as alleged, and [104] respondent denies that all kuleanas within the demised lands were demised by the will of Robert William Holt, or owned by him.

3.

That it denies the allegations of Paragraph VII of said petition, and further answering thereunto says that said Eliza R. P. Christian, during all the transactions referred to in said petition was legally competent to look after her own interests and to make conveyances of her property with full knowledge of the purpose and effect thereof.

4.

That respondent denies the allegations of Paragraph VIII of the complaint except as expressly admitted, but admits that for several years prior to 1910, it used and occupied large portions of the lands described in the complaint as tenant of persons having the legal estate in trust and with the assent of the beneficiaries of the said trust and as purchaser of certain undivided interests in said land; that on a considerable portion of which it planted and grew sugar cane in the course of its business and sublet other portions for the growth and cultivation of pineapples; it admits it secured by instrument dated March 17, 1905, a lease of said lands for twenty-five years at a certain rental to which Eliza R. P. Christian had assented; it admits that relief from said

lease cannot be prayed for in this action and alleges that relief cannot be granted from said lease in this action.

5.

That in reply to Paragraph IX it denies the allegations thereof except as expressly admitted, but admits that said [105] Eliza R. P. Christian had lived in the house of said Anne Holt Kentwell for many years; that at said time respondent James L. Holt was a resident of Honolulu, Hawaii, and was on friendly terms and had been in correspondence with said Lawrence Kentwell and said Eliza R. P. Christian; that the said Eliza was the only child and sole heir in expectancy of her father, John Dominis Holt and that said John Dominis Holt was a man approximately seventy-one years of age.

6.

That it denies all of the allegations of Paragraph X but admits and alleges that in the purchase of said Eliza's interest it was represented by the law firm of Castle & Withington of Honolulu; that it, through its agents, entered into an arrangement with said James L. Holt, at his suggestion and at his request, for the acquiring of a two-thirds interest in said lands, both in praesenti and in expectancy, including the share and expectancy of said Eliza R. P. Christian, and the interest owned by said James L. Holt, and understood that said James L. Holt would, and did in order to convey such interest, secure the conveyance of the interest of said

Eliza R. P. Christian and said Anne Holt Kentwell to him so that said interest might be united with those which he had acquired from his father, J. R. Holt, his uncle J. D. Holt, and his brother Robert Holt, which latter interests were then held in trust for said James L. Holt by one John F. Colburn, together with his own interest; that the fact that the said James L. Holt was dealing with the respondent Waialua Agricultural Company, Limited, through its agents, was well known to said Eliza R. P. Christian, said Anne Holt Kentwell and John Dominis Holt, and said Lawrence Kentwell, and the fact that said James L. Holt could not hope to [106] purchase the interests of said Eliza R. P. Christian and said Anne Holt Kentwell except upon the advancing of moneys by said Waialua Agricultural Company, Limited, was perfectly understood by said Eliza R. P. Christian, said Anne Holt Kentwell, said Lawrence Kentwell and said John Dominis Holt, and fully approved by them.

7.

In answer to Paragraph XI it denies the allegations thereof, but says that David L. Withington did proceed to England to secure the conveyance of the interests of said Eliza R. P. Christian and said Anne Holt Kentwell and did represent the respondent Waialua Agricultural Company as well as said James L. Holt, and further says that when said David L. Withington went to England all terms of the agreement to convey said property and/or

interests had been settled and understood by the parties to said conveyance and that it was well understood by all parties thereto that said David L. Withington represented both the respondent Waialua Agricultural Company, Limited, and said James L. Holt.

8.

In reply to Paragraph XII it denies all the allegations thereof except that it says that said David L. Withington did go to England and did meet said Anne Holt Kentwell, together with the other members of her household, including said Eliza R. P. Christian and said John Dominis Holt; that said David L. Withington did have opportunity to observe and did observe the mental condition of said Eliza R. P. Christian and was convinced and knew that she was legally capable of handling her business affairs and of making conveyances including [107] the conveyance in this proceeding with full knowledge of their purpose and effect.

9.

In answer to Paragraph XIII it denies each and every allegation thereof except as herein expressly admitted; that it says that the deed, a copy of which is attached to the petition herein and marked Exhibit B and made a part thereof, was duly and knowingly executed by all the parties to the same with full knowledge of the facts for an adequate consideration; that all said parties were competent to contract or to convey land and/or interests

therein, and that said deed having been duly executed and acknowledged was duly recorded in the Hawaiian Registry of Conveyances as set forth in said petition.

10.

In answer to Paragraph XIV it denies each and every of the allegations thereof, save and except that it admits that it rendered an account to said James L. Holt, paid to Eliza R. P. Christian the sum of $30,000.00 on behalf of said James L. Holt, paid to Annie Holt Kentwell the sum of $5,000.00 on behalf of said James L. Holt, and expended the sum of $110.32 in miscellaneous expenses.

11.

In answer to Paragraph XV it denies the allegations thereof and alleges the facts to be that in conformity with the agreement theretofore reached between the parties and the respondent, Waialua Agricultural Company, Limited, through its agents, said respondent, through its agents, paid the sum [108] of $120,000.00 for a two thirds undivided interest in fee in said lands, including the one-third interest of James L. Holt, the life estate of John Dominis Holt, the contingent interest of Eliza R. P. Christian, the interest of Robert Holt, the interest of John F. Colburn and the interest of Anne Holt Kentwell.

12.

That answering Paragraph XVI it admits that said William R. Castle did continue to hold in trust

for the respondent Waialua Agricultural Company, Limited all the rights covered by said deed of May 2, 1910, and that on May 17, 1920 said rights were conveyed to others with the knowledge of said Waialua Agricultural Company, Limited, but not at its instigation and request.

13.

Answering Paragraph XVII it denies the allegations therein contained, except that it admits the execution of the deed dated May 17, 1920, and alleges that the consideration therein mentioned was actually paid for in cash by the beneficiaries of said Helemano Real Estate Trust and said interests were actually owned by said beneficiaries;

14.

Answering Paragraph XVIII it denies the allegations thereof except that it admits that on July 20, 1921, by instrument in writing the Trustees of said Helemano Real Estate Trust did convey the properties mentioned in said instrument directly to the respondent Waialua Agricultural Company on the payment to said Trustees for the beneficiaries of said trust and in [109] proportion to their respective interests the full consideration mentioned in said instrument.

15.

That it denies all the allegations in Paragraph XIX except that John Dominis Holt died on April 10, 1922, and left as his sole surviving heir said Eliza

R. P. Christian; that it admits that since the death of said John Dominis Holt it has claimed, and now is the owner of, the property described in the petition herein by virtue of the deeds referred to in said petition as Exhibits B, C, D and E, but denies that such claim and ownership is wrongful or without right.

16.

That it denies each and every allegation of Paragraphs XX and XXI.

17.

In answer to Paragraph XXII of the complaint the respondent admits that said George H. Holt purporting to act as guardian for said Eliza R. P. Christian did purport to disaffirm said deed of May 2, 1910, but denies that said purported disaffirmance was effective or that it was within a sufficiently reasonable time to give it effect if there had been no other defects attaching to such purported disaffirmance, and respondent says that said George H. Holt purporting to act as such guardian purported to disaffirm the said lease of March 17, 1905, but denies that said purported disaffirmance was effective or that it was made within a time sufficiently *reasonable give* it effect if there had been no other defects attaching to such purported disaffirmance and the respondent specifically denies [110] that any tender of any moneys paid to said Eliza R. P. Christian and/or Anne Holt Kentwell has never been made to this respondent.

18.

In answer to Paragraph XXIII of said petition it denies the allegations thereof.

19.

And it specifically denies that said Eliza R. P. Christian or George H. Holt, her purported guardian on her behalf, has any interest in the property described in said petition or in the rents, profits, or use thereof.

20.

That it appears by the complaint that the complainant has neglected to avail herself of any rights which she might have had in the lands mentioned in the complaint for an undue and unreasonable length of time during which time the respondent, Waialua Agricultural Company, Limited, to the knowledge of the complainant expended large sums of money in permanent improvements on said land as the owner thereof, and that she, the complainant, has been guilty of such laches as to bar her from relief prayed for by the bill or from any relief in equity.

WHEREFORE respondent, Waialua Agricultural Company, Limited, prays that the petition herein be dismissed, and for its costs herein most wrongfully sustained.

Dated, Honolulu, T. H., March 8, 1929.

WAIALUA AGRICULTURAL COMPANY, LTD.
By ROBERTSON & CASTLE
GEORGE S. LEISURE
Its Attorneys. [111]

[Title of Court and Cause.]

STIPULATION.

Filed at 1:50 o'clock P. M. Mar. 12, 1929. A. E. Restarick, Clerk. [112]

It is stipulated by and between the parties to and in the above entitled Court and cause that the name of H. V. VON HOLT as Guardian of the estate of Eliza R. P. Christian, an incompetent person, may be substituted in the place and stead of GEORGE H. HOLT as such Guardian.

Dated Honolulu, T. H. March 12th, 1929.

ELIZA R. P. CHRISTIAN, an incompetent person, by George H. Holt, her Guardian,

Petitioner

By ULRICH & HITE
By CHAS. M. HITE
Her Attorneys

WAIALUA AGRICULTURAL CO., LTD.,

Respondent,

By ROBERTSON & CASTLE and GEO. S. LEISURE
By ROBERTSON & CASTLE.
Its Attorneys

JAMES L. HOLT,

Respondent

By JOHN R. DESHA
His Attorney

Approved this 12 day of March, 1929, and let the name of H. V. Von Holt be substituted in place and stead of George H. Holt herein.

[Seal] ALBERT M. CRISTY
Judge, Circuit Court, First Judicial Circuit, Territory of Hawaii. [113]

[Title of Court and Cause.]

DECISION

Filed at 11:40 o'clock A. M. May 11, 1929. A. E. Restarick, Clerk. [114]

This is a suit in equity by an alleged imbecile to cancel a deed. Eliza R. P. Christian, claiming to be an imbecile and instituting this proceeding through a guardian, seeks to cancel a deed, executed by her for the benefit of respondents May 2, 1910, of an undivided one-third contingent remainder in upwards of 14,000 acres of land at Waialua, Oahu, (which contingent undivided interest vested on April 10, 1922). The basis of the bill is the alleged pre-existing and continuous imbecility of the petitioner—(grantor), from childhood, constructive fraud and the alleged gross inadequacy of consideration, and the bill prays for an accounting for the reasonable rental value of said one-third interest since April 10, 1922.

Stripped of verbiage and incidental issues (which will appear in the findings of facts where material), the amended [115] petition, in the light of admissions made during the trial, alleges that, on May 2, 1910, respondent, Waialua Agricultural Company, Limited, (hereinafter called Waialua Company or the Company), procured a conveyance to be executed for its benefit by the petitioner of a contingent one-third undivided interest in the land described in the petition; that said interest vested on April 10, 1922; that said petitioner has always been, and was on May 2, 1910, wholly incompetent mentally to execute a conveyance; that said conveyance purported to be for a consideration of $30,000.00 to petitioner; that petitioner never received said funds and that said amount was grossly inadequate; that said respondent, Waialua Company, has occupied and used said lands continuously from 1910 to date claiming to be the owner under said conveyance, and has refused to account for the undivided interest of petitioner in the rents, issues and profits since April 10, 1922; that a proper guardian was appointed as soon as may be and now prays for cancellation and accounting.

The answer of the Waialua Company denies the incompetency and alleges her competency; denies inadequacy of consideration and maintains that it is a bona fide purchaser for adequate consideration; and claims to be the owner in fee simple of at least eight-ninths of the entire property, including the interest claimed by petitioner. The answer also

raises the questions of adequacy of legal remedy, insufficient tender and claim of laches.

Petitioner's bill further alleges the undivided interest [116] of the petitioner to be worth in excess of $1,000,000.00 and that, in addition thereto, petitioner is entitled to many times $30,000.00 plus interest for the reasonable value of unpaid rents for her undivided interest since 1922 and offers to do complete equity in restoring respondent to "statu quo" in the event of cancellation and accounting.

Upon this state of the pleadings, (including an answer by James L. Holt admitting petitioner's bill), the cause was tried and witnesses were produced on behalf of the parties hereto.

THE TITLE TO WAIALUA LANDS PRIOR TO MAY 2, 1910.

It is admitted and the Court finds that R. W. Holt, grandfather of petitioner, died in 1862, leaving a large estate, which included the Waialua lands, in trust to pay the income in equal shares for life to his three sons, (a) Owen J. Holt, (b) James R. Holt, and (c) John Dominis Holt; and AT THE DEATH of each respective life tenant the one-third remainder in fee was to vest in the heirs-at-law of the respective son so dying. The said Owen J. Holt, born February 17, 1842, died on June 10, 1891, leaving nine children him surviving. In each of these children was then, (1891), vested an undivided one-twenty-seventh interest in fee simple in said

lands. The said James R. Holt, born October 17, 1838, was 71 years of age on May 2, 1910, and was living in Hawaii. The said John Dominis Holt, born December 17, 1839, was, on May 2, 1910, 70 years of age and living in Oxford, England, with his niece, Annie Holt [117] Kentwell and her husband, and with his only child, Eliza Christian, (petitioner herein).

James Lawrence Holt, (one of the respondents herein), is the son of James R. Holt and had acquired, in 1893, the sole title to the expectancy as to one-third interest should he survive his father, James R. Holt. He, James Lawrence Holt had also acquired, prior to July, 1902, assignments and control of the life interests of his father, James R. Holt, and of his uncle, John Dominis Holt, subject to paying these life tenants each a weekly stipend which amounted to $35.00 a week in 1910. These assignments also carried an appointment of James Lawrence Holt as attorney-in-fact for the life tenants. This control of the two-thirds life interest was held in the name of John F. Colburn, Trustee. Both James Lawrence Holt and John F. Colburn were residents of Honolulu in 1910.

Eliza (Holt) Christian, born December 30, 1885, was the sole living child of John Dominis Holt on May 2, 1910. She was living with her father and the Kentwells at Oxford, England at that time. There was of record at Honolulu, as of June 17, 1907, a purported assignment by Eliza (Holt) Christian to Annie Kentwell, of Eliza's interest (if any) in the

rents, issues and profits under a lease of the Waialua lands made in 1905 to Waialua Company. This purported assignment by Eliza was "in consideration of" a covenant by Annie Kentwell to support Eliza during her life.

It is further uncontradicted that, between June 9, 1900 and July 1, 1907, Waialua Company had purchased, at different [118] times for a total recited consideration of $46,300.00, the undivided vested interests in fee to the Waialua lands from six of the children of Owen J. Holt. The Waialua Company was, thereby in 1910, a tenant-in-common with the other Holt heirs of a two-ninths undivided interest in fee in said lands. (Ex. A-7, A-11, A-12, A-13 and A-14). These deeds, also, concern interests in other small parcels, but the major interests conveyed to Waialua Company involved the lands in the present suit.

The Waialua Company had also obtained a lease from the owners of vested interests, the life tenants and the administrator of the original testator's estate as of April 1, 1905, for a term of 25 years upon the lands in question. This lease purports to have been signed by Eliza Christian, (petitioner) then 19 years old, not as a lessor but as consenting, without present consideration, to the lease by others who were named as lessors. (Ex. A-8). This lease called for an annual rental, net above taxes and improvements, (which were to be left on the land), of $9,000.00, (or at the rate per annum of $3,000.00 per one-third interest).

In other words on May 2, 1910, Waialua Company was in possession of all of the Waialua lands in controversy as lessee and was the owner of two-ninths undivided interest in fee. James R. Holt and John D. Holt had respective rights against James Lawrence Holt and John F. Colburn, Trustee, to receive weekly income and maintenance for the balance of their lives. Ann Kentwell had assignments of income rights from John D. and [119] Eliza. Subject to this obligation of maintenance, James Lawrence Holt, through and with John F. Colburn, Trustee, owned the life interests in two-thirds of said lands and the expectancy in remainder in one-third, should James Lawrence Holt survive his father, James R. Holt. Eliza Christian (petitioner) held a contingent remainder in one-third, should she survive her father, John Dominis Holt.

(It is admitted that James R. Holt died on April 18, 1916, leaving him surviving, James Lawrence Holt. John Dominis Holt died on April 10, 1922, leaving him surviving, Eliza Christian, as his sole heir at law).

WAS ELIZA R. P. CHRISTIAN INCOMPETENT TO EXECUTE A DEED ON MAY 2, 1910?

In determining the issue of fact as to competency or incompetency, the legal tests to be applied should first be ascertained. Then the evidence itself can be analyzed with respect to (1) the general background and education of petitioner; (2) the observations of

associates and acquaintances; (3) the observations of physicians who do not claim to be expert alienists; (4) the opinions of experts; (5) recorded acts of and concerning Eliza. Ultimate findings of fact as to the competency or incompetency of petitioner may then be made.

THE TEST OF MENTAL COMPETENCY.

The common law of England, approved by the United States Supreme Court, has established a general rule that "to constitute such unsoundness of mind as should avoid a deed AT LAW, [120] the person executing such deed must be incapable of understanding and acting in the ordinary affairs of life". Ball vs. Manning (Eng.) 1 Dowl. & C., 254; Dexter vs. Hall, 82 U. S. (15 Wall.) 9; Edwards vs. Davenport, 20 Fed. 756, 758. Further elaborating this general statement, it is said in 2 Black on Rescission and Cancellation, (2nd Ed.), Sec. 262, pages 736 to 737 that the test generally agreed upon is this: "A deed or contract cannot be set aside on the ground of insanity if the person had sufficient mental capacity to understand in a reasonable manner the nature of the particular transaction in which he was engaged and its consequences and effects upon his rights and interests.—The proper inquiry is whether he was capable of understanding and appreciating the nature and effect of the one particular act or transaction which is challenged".

And again in the same work and section on page 738, Mr. Black summarizes the authorities cited by

him in these words: "If the effect of the instrument as a conveyance of property is understood, it is not necessary that he should have the ability to understand the LEGAL effect of the words employed. But contractual capacity cannot be predicated of a person whose mind and memory are so impaired that he cannot understand the nature of the property being dealt with, nor his relation to it or power over it, and that he is incapable of recognizing facts as to its previous disposition which should be within his own knowledge, nor of a grantor who is incapable of comprehending that the effect of a deed is to dispossess him of [121] the title to the land described therein, nor of one whose mind is so weak that he had no intelligent conception of the quantity or quality of the land he is about to convey, cannot count money and does not know whether ten dollars is more or less than a hundred dollars".

And again on page 739: "Further a person cannot be said to be capable of giving an intelligent assent to a transaction unless he has the mental ability to exercise some measure of JUDGMENT and WILL in relation to it. If his mind is so far a blank that he will register automatically the wishes of another, it is clear that he does not possess the requisite degree of intelligence".

And again on page 740: "And indeed it has been said, in one of the cases on the subject, that, while one may have the mental capacity to execute a deed as a gift to a child in consideration of love and affection, if he can understand his ordinary business

and what disposition he is making of his property, yet to have sufficient capacity to make a valid deed on a sale of the property, he must possess sufficient mental strength to judge of values and successfully to oppose fraud and undue influence".

In discussing feeble mindedness and the true test of a capacity to understand and assent in a reasonable manner Mr. Black further summarizes the law in section 263, pages 743 to 744 of his work, saying: "On the other hand it is equally true that a grantor in a deed, for instance, though he is not positively insane nor utterly imbecile, may yet be so far [122] incapacitated as to be unable to bring an intelligent judgment and understanding to bear on any business matter, and so be incompetent to execute a valid deed".

In the case at bar, the guardian of the petitioner does not claim that his ward was insane in the sense of having a diseased mind. His claim is that Eliza Christian was an imbecile from birth; that is to say, that she, both before and at the time of the deed in question, was so lacking in mental capacity that she could not have intelligently comprehended the nature of the transaction engaged in, the extent and value of her own property rights, or the most elementary facts upon which to form an independent judgment to guide her; but, on the contrary, that she was simply an automaton to register the will of others than herself. What do the facts in this case show as to the mental capacity of Eliza Christian for understanding and forming independent judgments in the ordinary affairs of life?

THE EVIDENCE AS TO COMPETENCY OR INCOMPETENCY.

(1) The General Background and Education of Eliza Christian.

Eliza (Holt) Christian was born December 30, 1885, at Makaha, Waianae, Oahu, a country district about thirty miles from the City of Honolulu and about three miles from the nearest country school. She had no schooling during the first eight years of her life. Whatever attempts were made to include her in the training given to the young children of her relatives accomplished little. She was apparently [123] left a great deal to herself as an "odd" child. She had no brothers and sisters.

Her father brought her to Honolulu to live in the early nineties. Her mother died when she was about seven years old. From about 1893 to 1898 (that is from the ages of eight to twelve or thirteen) Eliza was at the Catholic Convent during the school year. During vacations she and her father lived with various relatives in Honolulu with no family home of her own. After five years at the Convent, she was next sent by her father, under the guardianship (as a minor) of her cousin, Annie Holt (Kentwell), to a Catholic Girls' School in San Jose, California, where she remained for about a year. We next see her for a short time in a Priory School for Girls at Honolulu, at the age of about sixteen years. She remained there but a short time, being taken out during her confinement and giving birth to an ille-

gitimate child. That was the end of her schooling; seven years between the ages of eight and sixteen years, in three of the best schools without leaving a record of accomplishment beyond the most elementary character.

Practically from the time when this schooling stopped, about the year 1902, and continuously up to the present time, Eliza Holt (Christian) became the family drudge and charge of Annie Holt Kentwell and of her husband, Lawrence Kentwell. Her father also lived with (or on) the Kentwells, doing nothing to support himself or his daughter, except as the maintenance money due from James Lawrence Holt may have been received [124] and used for that purpose.

Her father had assigned his right to respondent, James Lawrence Holt with power of attorney, reserving less than half to himself. His chief interests, from the evidence, appeared to be gin and beer, fish and poi,—a place to eat and to sleep.

Before the Kentwells left Honolulu in 1906, they had three children, whose care was shared by Eliza. Stopping at several places on the United States mainland, the Kentwells, John Dominis Holt and Eliza (Holt) Christian landed in New Jersey, where Lawrence Kentwell, Annie's husband, attended Columbia Law School. In 1909, they all moved to Oxford, England, where the home was established that still exists. Lawrence Kentwell continued his study of law at Oxford through 1910.

He also continued to manage and control the combined family finances.

(2) The Observations of Associates and Acquaintances of Eliza as to her Mentality.

A great number of local witnesses testified both for the petitioner and the respondent, covering the period from Eliza's infancy to the time she left Hawaii in 1906. The respondent's witnesses testified that Eliza was normal but not very bright, backward, timid, shy; that is to say, she could wash and dress herself, do simple housework and sewing and read simple things. She did not mix much with her elders; spoke when spoken to. The petitioner's witnesses, EXCLUDING FROM CONSIDERATION THE TESTIMONY OF JAMES L. HOLT AND ANNIE KENTWELL, testified that she was not normal, was "ihepa" [125] (meaning feeble minded); that her normal companions were much younger than she; that she was an "easy mark" at play; that she did very little in caring for her own person, except as directed explicity by others; that she did not seem to understand the value of money as a young girl or as an adult, even as to the small purchases that would be natural to children; that she was never allowed to go very much by herself; and that she looked and acted silly and foolish without engaging in the natural conversations of growing children of her age.

Such memory as her teachers had of her was of a child with very little ability to learn, silly and

foolish, and who made very little progress. Both sets of witnesses were vague and exaggerative. There is no evidence of any independent conduct on the part of Eliza Christian up to 1910, showing that she, by and for herself, had ever been called upon to handle money in any substantial sum, manage a bank account, plan or act for herself, except under fairly rigid surveillance by her elders who had charge over her. So long as creature comforts and affection were accorded her, she was the obedient child (even in mature years) of her father and the Kentwells.

The same general character of testimony was produced relating to the years from 1910 to date. Associates and acquaintances during this period indicate no further progress on the part of Eliza to think, act and form judgments in relation to self direction. In 1908 she had another illegitimate child and in 1916 or 1917, still another, the latter to whom is still [126] living. No intelligent information was ever obtainable from Eliza as to the paternity of these children. This evidence, as to the years after 1910, was admitted and is considered solely in connection with the question whether or not the whole life of the petitioner indicates a normal growing mind, or a mind incapable of understanding more than the simplest personal matters, incapable of development to a point of exercising reasonable, intelligent, independent judgment in ordinary business affairs, or in any of the ordinary affairs of life.

(3) The Observations of "Non-Expert" Physicians.

Dr. Wayson of Honolulu, witness for the petitioner, was the family physician from about 1896 to about 1906. He had frequent opportunity for observations. To him Eliza was a "nit-wit" or an imbecile, meaning, thereby, a person having a mentality less than to be expected of a six or seven year old child.

Dr. Masson of the Mayo Clinic, witness for the respondents, attended Eliza as the physician in charge of the hospital, at New York City, where Eliza was confined at the instance of the Kentwells with her second illegitimate child in 1908 to 1909. His recollection of attendance during a few weeks' confinement is simply of getting "yes" or "no" answers, in the main, to the ordinary questions of a physician as to the condition of a patient in the hospital. He did have a memory of Eliza as a "rather diffident foreigner, who did not speak a great deal of English"; (altho the evidence conclusively shows that ENGLISH [127] was the language used by Eliza); of one who did not talk much and whose language was broken. He did not remember anything indicating that she was other than normal.

Dr. Douglas in England testified as a witness for the respondents. He did not set himself up as an expert but simply as a trained observer having practiced medicine for more than forty years. He saw Eliza for a short time on one occasion in 1923, at Oxford, England, in connection with an investiga-

tion to report to the Hawaiian Trust Company, Limited, at Honolulu, whether Eliza understood and was satisfied as to what was involved in appointing Annie Kentwell to have full authority over her property. He admitted getting his history of the case from Annie Kentwell and asking Eliza questions calling for "yes" or "no" answers. Dr. Douglas found nothing which, in his judgment, was not normal.

Over against his testimony is the evidence of another semi-expert, Dr. Morton in England, who was the family physician, attendant upon Eliza in England occasionally from and after 1909 to 1928. Dr. Morton had had some experience in mental diagnosis, and from his infrequent observation over said period, Eliza had a mentality of a child of five or six; which testimony corroborates Dr. Wayson.

(4) The Opinions of Experts.

In addition to such semi-expert testimony, the petitioner offered the testimony of Dr. Good, who appears to be a leader in England as to mental diagnosis. Dr. Good examined Eliza in [128] 1915, 1925, 1926 and 1928 and stated that Eliza's mental condition as shown by all of these examinations indicated her to be a congenital imbecile with a mentality of a child of four or five years of age.

Again, the petitioner produced the testimony of Dr. Waterhouse who examined Eliza in 1926 and 1928 and who corroborates Dr. Good. Both of these experts testified that the condition they found was due to a want of development of mind that must have been present always.

(5) Certain Recorded Acts of and Concerning Eliza, Including Her Testimony in the Hall Case.

Commencing in 1893 Eliza, AS A MINOR, was under guardianship. For one year her father acted. From 1894 to 1900 a third party acted. In 1900 Annie Holt (Kentwell) was appointed. Apparently this guardianship was never officially closed. The court papers are lost. (Ex. G.) Eliza has, continuously since 1902, lived under the care of Annie Kentwell, who exercised the same directing control as if she were in fact the legal guardian. The entire business correspondence, affecting Eliza's affairs during all these years to date, emanated either from Lawrence Kentwell or Annie Kentwell.

On May 27, 1902 (at the age of 16½ years) Eliza appeared as the prosecutrix against a man charged with rape. To what extent if at all she was first examined by the court to discover her competency does not appear from the evidence herein. The transcript of her testimony is the only undisputed picture of [129] her mental processes produced in the case at bar. The record of the direct testimony shows some knowledge of GENERAL localities and directions about town and some ability to follow leading questions, SPASMODICALLY, in connection with the subject matter under investigation. Other than that, there is nowhere a consecutive, independent narrative by the witness. On the contrary the transcript demonstrates a continuous necessity on the part of the examiner to lead her back

to the progressive stages of her story. (Resp. Ex. 4, pp. 1-18.)

On cross examination Eliza stated, in response to leading questions, that she had been in the Convent for the past seven years and had studied the primer and second reader, spelling and first and second parts of arithmetic. Many questions were asked opening the door wide for explanations and Eliza answered: "I don't know", or "I don't remember". She would follow leading questions of a simple nature for awhile, and then her mind would cease to function or go off on a tangent. Then, she didn't know who was the father of her child. Again, she assented to a leading question naming a third party as the father. She "don't know anything about" whether it is right or wrong to have sexual relations with a man before marriage. She "don't know" why she is in court or whether a thirty party was the father of her child. Then, she answered "yes" or "no" to a few leading suestions. Called upon to pick up the story, she didn't answer.

Then followed a short recess and after that a patient attempt to get the witness to talk, with little but monosyllables in answer to leading questions. She replied to a question as to whether it was right or wrong to have sexual relations by [130] saying, briefly: "Wrong". Then followed an adjournment to the next day.

She changed her story materially on this second morning, still answering leading questions by a word or two, mostly "yes" or "no", when the ques-

tions were simply phrased, developing by monosyllables a sordid tale of a simpleminded girl and animal passions of men.

At the conclusion of the examination Eliza was cross-examined as to her ability in simple arithmetic. She didn't answer or shook her head, (indicating she did not know), when asked how many seven apples and five apples would make; or how many fingers one would have with seven on one hand and five on the other; or how many two apples and two apples would be; or what five times four would be. This record gives an insight into Eliza's mental processes before any disputes over her property rights was ever thought of.

Counsel for petitioner, in the case at bar, offered the instructions given to the jury in the Hall case. Upon objection this court refused the offer. This court is still in a quandary as to how this case could have been submitted to the jury at all as a case of rape, (except possibly on the theory that Eliza was too feebleminded to have been capable of consent).

The next record is an agreement of adoption in 1902, executed by Eliza, a minor, together with her father and the adopting parents and concerning Eliza's illegitimate child. What part Eliza took as distinct from her father is problematical. The judge who acted at the time is living in Honolulu and was called by neither party. [131]

Next, we have Eliza's marriage in 1903 consented to by her father. Whether that consent should be

construed as evidence of growing competency, or the result of a desire to pass on a parental responsibility that was becoming a problem, is a question as to which the rest of the evidence tends toward the latter construction.

Martial life was of short duration. The next record (Resp. Ex. 7) is a brief decision and decree wherein Judge Gear, in 1905, refused to annul Eliza's marriage on a petition brought on her behalf on the ground of her incompetency, the judge saying in a one paragraph decision:

> "* * * the plaintiff has not made out such a case as under the authorities is required * * * while it seems to me that it perhaps would have been much better for the plaintiff never to have been married * * * nevertheless the plaintiff has not shown such a case of incompetency as to justify the court in annulling the marriage * * *". (Underscoring ours).

What evidence was before the court or upon what authorities the decision is based is not known to this court. Annulment, then and now, required an affirmative finding that the party was an IDIOT or a LUNATIC. (Sec. 2955 R. L. 1925. Same sec. being Sec. 2218 R. L. 1905 without change since 1903). Many considerations might lead a judge to REFUSE TO INTERFERE with a marriage status without thereby adjudicating competency to handle business affairs. It is a negative decision at the most on the question before this court. In fact the parties did not resume marital relations again. [132]

There are also in evidence a number of deeds, options and assignments, signed prior to 1910 by Eliza before notaries, concerning her property. There is also in evidence the negative testimony of such notaries that they observed nothing wrong. In each of these cases Lawrence Kentwell was involved. In none of them was Eliza an independent actor, a directing influence, or a manager of the funds involved. She signed her name to any documents, apparently prepared or vouched for under the direction of Lawrence Kentwell. They do not help to solve the problem: "Was Eliza in fact COMPETENT to sign deeds?" They may affect the question of ignorance as to Eliza's condition and want of notice to purchasers.

FINDINGS AS TO COMPETENCY.

In Leonard v. Shane, 182 Iowa 1134, 166 N. W. 373, cited by respondents, the rule of evidence applied by the court was: "The fact (of mental incompetence) need not be proved beyond a reasonable doubt, but the preponderance in favor of such finding must be reasonably clear and satisfactory". (166 N. W. at p. 374).

The transaction which is questioned in the case at bar is the purported sale by Eliza Christian of all her right, title and interest in the 14,000 odd acres of land at Waialua, Oahu. Her rights were distinct and separate from the rights of her father, the Kentwells and any other person. Her right was entirely dependent upon whether or not she survived

her father. If she, in fact, had been consulted in connection with the [133] correspondence between James L. Holt and Lawrence Kentwell, she would have had to determine whether in her judgment, as advised by others, her independent right in expectancy was worth $60,000.00 or $30,000.00 or any price; whether her right should be sold at all, or for present cash or for partly cash in hand and partly cash held in escrow subject to payment of the balance when her father died. In some measure, she would have had to judge the present investment value of cash as against her rights in FUTURE. She would also have to have some intelligent understanding of the fact that she was either being offered $30,000.00 cash to herself, for her own separate interest, or that such offer was a joint offer to herself and to her father; and have some understanding of comparison between a life estate with a few years to run and a possible interest in fee.

Respondents offered Exhibits 1-A to 1-D inclusive as typewritten copies of letters turned over to Waialua Company by James L. Holt prior to the transaction of May 2, 1910, these letters purporting to be signed by Eliza. There is nothing in the entire record, either on behalf of petitioner or respondent, which would justify the court finding that the original of Exhibit 1-A was really the letter of Eliza, written by her, with an understanding of what the terms meant to her in fact, as distinguished from legal meaning. Exhibits 1-B to 1-D may well have been copies of letters written by or dictated to or

merely signed by Eliza. No one of these three letters indicates that Eliza, if she was the writer, understood [134] her independent rights in Waialua or had an appreciation of anything more than the fact that her father desired money for the necessities of life.

Upon the weight of the testimony and the credibility of the witnesses, as herein summarized in connection with the question of competency, the court finds:

1. Eliza (Holt) Christian, petitioner, neither was, nor is, an idiot, a lunatic or utterly imbecile.

2. She was and is, however, a person of undeveloped intellect, incapable of forming a reasoned judgment or understanding; incapable of comprehending her own right to an independent status, the extent or nature of property or of her property interests, the value of money, or the ordinary matters of life essential to a reasonable degree of independent living.

3. She had insufficient mental capacity to comprehend the difference between $100.00 and $1,000.00; between $30,000.00 or $60,000.00 for her individual rights; or to comprehend the difference between payment to her individually, for her sole disposition, of any such sum or sums and payment to her circle of relatives and under their control; or whether $30,000.00 or any sum was for her rights as distinct from the rights of others involved in the deal; or the difference between present payment of income and future payment of principal; or to understand

that she had rights distinct and independent of her father or of Annie Kentwell.

4. She could not possibly have comprehended, even with advice worthy of trust, the elements necessary to form an independent judgment or to exercise a reasonable measure of [135] choice or of will relative to the value of cane land, pineapple land, ranch land or any kind of land in any quantity; or of postponed rights therein as opposed to present interests; or even the elementary character of her rights and direct the disposition of what she owned.

5. The court is convinced that Eliza did not have the most elementary capacity to understand and judge her rights and protect herself from undue influence and fraud; and that at no time was she an independent actor with a knowledge of her rights.

6. In short, she was mentally incompetent to execute a conveyance in 1910 or at any other time within the scope of the evidence and the law in this case.

7. Her incompetence had not been adjudicated by a proper protective proceeding and was not such as to be clearly self-evident to an entire stranger dealing with her casually without prior notice of facts to indicate her entire dependency.

8. Eliza's incompetency was known to James L. Holt, to her father, John Dominis Holt, to the Kentwells and to others who were familiar with her dependency upon the Kentwells.

9. James L. Holt, Lawrence Kentwell, his wife, and John Dominis Holt did everything in their

power to represent to the Waialua Company that Eliza was a competent and willing seller, who wanted to join in their attempts to sell out.

THE DEED OF A PERSON MENTALLY INCOMPETENT IS VOIDABLE.

Petitioner claims that a deed from an incompetent is void; respondent, Waialua Company, claims that it is, at the most, [136] voidable in the discretion of a court of equity under eqtitable principles of restoration, if cancellation be found to be equitable at all.

Petitioner cites Dexter v. Hall, 82 U. S. (15 Wall.) 9. This case merely holds that a POWER OF ATTORNEY from a legally incompetent person is void.

Respondent cites Luhrs v. Hancock, 181 U. S. 567. This case merely stands for the principle that a title of a purchaser on a sale under a JUDGMENT of foreclosure CANNOT BE ATTACKED COLLATERALLY on the ground of the alleged insanity of the mortgagor. The case at bar is a direct attack by the alleged incompetent, personally represented.

Referring again to 2 Black on Rescission, etc. (2nd Ed) at page 718, the text writer sums up the law: "But if the contracting party had no knowledge of the other's insanity, and dealt with him in ENTIRE INNOCENCE AND GOOD FAITH, and if, for this reason, the contract cannot be regarded as absolutely void but as voidable at most, there remains the fact that an insane person cannot give that intelli-

gent consent without which a valid contract cannot be formed, and hence, in this case also, the contract may be avoided or set aside on equitable terms". And again on page 719 that author summarizes: "But deeds so made (by mental incompetent) are not universally regarded as absolutely void, and generally speaking, where a business transaction of any kind is to be avoided on the ground of insanity of a party, the court of equity is the proper forum to grant relief * * *". [137]

And again on pages 722-724 the author summarizes: "* * * The rule almost universally prevailing in modern times being that the contracts, as well as the deeds and conveyances, of a person who is actually insane at the time, but not judicially so adjudged and not under guardianship, are voidable for that cause, on equitable principles, but not absolutely void. * * * and if such a deed is merely voidable it will not be set aside except on equitable terms and conditions. * * * a decree will not be withheld merely because it appears that the grantee did not know of the insanity of the grantor and obtained the conveyance without fraud and for an adequate consideration".

In a well reasoned case, cited by respondents, which adopts the "voidable" theory there seems to be no doubt of the incompetent's right of rescission, IF the INNOCENT purchaser, ignorant of the incompetency, is restored to statu quo by return of the purchase price. The court, in determining whether or not there shall be cancellation must

balance all the equities. Coburn v. Raymond, 76 Conn. 484. See also Sparrowhawk v. Erwin, 246 Pac. 541 (Ariz).

The rule in New York is: "The deed of a lunatic is not void, in the sense of being a nullity, but has force and effect UNTIL the option to declare it void is exercised". Blinn v. Schwartz, 177 N. Y. 252.

"If the lunatic and his relatives and friends, and those upon whom rests the moral or legal duty to protect him in his unfortunate mental condition fail to have his mental incapacity judicially determined, so that others may learn of his condition, and the mental condition and appearance of the lunatic [138] is such that he causes even the cautious and prudent individual with whom he deals to believe in good faith that he is a fully competent person, then simple justice demands that innocent third persons be not made to suffer and lose moneys actually paid out by them in good faith in carrying into effect the contracts made by them with such lunatic—. The reason of the rule requires with equal force the restitution of moneys thus expended, though the lunatic did not profit thereby as well as where he did so". Edwards v. Miller, 102 Okl. 189, 228 P. 1105.

Given the facts, as has been found in the case at bar, that the grantor both before and at the time of the conveyance which is challenged and ever since, has been and still is incompetent to the extent of having been incapable of understanding and acting in the ordinary affairs of life, a conveyance made by

such a person will be set aside, either with or without restoration of the purchase money as the equities require. See also, Thompson, Real Property, Volume 3, pages 1008 to 1009; Brewster v. Weston, 126 N. E. (Mass.) 271; Gates v. Carpenter, 43 Iowa 152; Hovey v. Hobson, 53 Me. 451; Jordan v. Kirkpatrick, 25 Ill. 116, 95 N. E. 1079.

Incidentally on this point the court has carefully read cases cited by the respondent in which equitable interference was denied, among them being Dragoo v. Dragoo, 50 Mich. 573; Leonard v. Shane, 182 Iowa, 1134; In re Snyder's Estate, 279 Pa. St. 63; Grove v. Taylor, 143 Md. 184. However, the court finds that each of these cases is wholly inapplicable to the [139] facts in the case at bar. In those cases the court refused relief where detailed and substantiated histories of PRIOR COMPETENCY were opposed practically alone by expert testimony. In the case at bar complete want of history of independent competency and consistent history of guardianship-in-fact, if not in-law, with advantage taken by those relatives who should have protected, is CORROBORATED by the experts and semi-experts.

Section 2463, Revised Laws of Hawaii, 1925, gives equity jurisdiction in cases among others involving suits between tenants in common, suits in accounting and, according to cases cited under this section, suits for cancellation. The instrument challenged is not void on its face. Its insufficiency and relief therefrom depend upon oral proof and equitable principles.

The precise question raised in the case at bar does not appear to have been passed upon by the decisions of our Supreme Court. From the decisions elsewhere as hereinabove summarized, it is clearly apparent that a person who has always been mentally incompetent is entitled to the protection of a court of equity and to have the transaction, affecting his or her property rights, scrutinized. This does not mean that such transactions are void and a nullity. On the contrary, it is clear that such transactions are of force and effect until directly attacked.

When incompetency is shown as a fact in a direct attack upon the transaction, it is the duty of a court of equity to examine into the transaction and to weigh the equities between the incompetent and the person or persons claiming to have [140] succeeded to the incompetent's property. Even if it clearly appears that the latter has been guilty of no fraud in fact, of no overreaching in fact, and if it further clearly appears that the respondent has paid an adequate value to the incompetent, from which the incompetent had benefited, some courts permit avoidance if the STATU QUO can be reached by complete restoration of the purchase price. In some cases where equity has thus been satisfied that the incompetent has in fact been adequately and fairly treated by an entirely INNOCENT purchaser who had in fact given adequate consideration, equity has refused to avoid the deed and has left the incompetent to his remedies, if any, against those who may have handled the consideration. Slight evidence of

overreaching or of inadequacy has always been sufficient to turn the scales in favor of the incompetent.

The final question before this court, then, is whether or not Waialua Company was a bona fide purchaser for adequate consideration to such a degree that equity should refuse relief. The answer to this question will require an analysis of the negotiations and the transactions itself.

WAS WAIALUA COMPANY A BONA FIDE PURCHASER AND FOR AN ADEQUATE CONSIDERATION?

Ever since its incorporation in 1898, Waialua Company had been endeavoring to acquire not only the use and control of the Holt lands at Waialua, but also the ownership of as much as it could get. Prior to 1907, the Company had purchased outright [141] from six of the children of Owen J. Holt, their respective one-twenty-seventh interests. The Company had succeeded in acquiring from these children an estate in fee amounting to two-ninths undivided interest for a combined total price of $46,300.00. To be sure this sum included consideration for other small interests which did not concern the lands in this suit, but these other interests were of a minor character. Moreover, this price relates to the Waialua lands in an unimproved condition.

Under the 1905 lease negotiated by John F. Colburn, Waialua Company took possession and started improvements for the purpose of increasing its business profit. From 1905 to 1910 the Company

had put under cultivation approximately 1600 acres of cane lands, which were producing bi-annual cane crops averaging in excess of six tons per acre, or about three tons per acre per year. In addition the Company had actually subleased about 2500 acres of the Waialua lands for pineapple purposes, calling for a combined rental to the Company, net above taxes, of $22,000.00 per year as of 1910.

An analysis of all the evidence clearly shows that the fair market value of all of these Waialua lands in controversy in fee unincumbered was in excess of $400,000.00 under conditions prevailing in 1910. A one-third interest in fee in 1910, free from incumbrances, had a market value in excess of $130,000.00.

In 1910, the only incumbrance on the land was the 1905 lease. This lease had an expectancy, so far as concerned each one-third interest involved in the James R. Holt and John Dominis Holt lives, of eight years, figured at a mortality expectancy as to the life tenants of eight years, minus or plus [142] such years as the life tenants should actually live. Beyond such life estate the Company had at the most a right to test out the interest that could be claimed to flow from the fact that Eliza Christian and James Lawrence Holt were respectively assenting parties to the lease in 1905, without present consideration, and should they actually survive their respective parents.

Figured on the eight year mortality expectancy of the life tenants, the Company was obligated un-

der the lease to pay $6,000.00 per year rental as to two-thirds interest or a total of $48,000.00 in eight years on a leasehold, having in 1910 a rental VALUE as to two-thirds of at least $22,000.00 per annum, net above taxes, or a gross rental value for eight years of $176,000.00. In other words the Company had in 1910 under its lease an expectant saving to itself in rental values in excess of $120,000.00. This was the Company's position in 1910 when it began to hasten proceedings to buy, due to the appearance of a stranger to the title coming into the field as a prospective buyer.

Moreover, for a long period of time James L. Holt and John F. Colburn, his Trustee, had been endeavoring to sell their interests to Waialua Company. First, these sellers had proceeded on the theory that they owned a two-thirds interest. This had been decided against them prior to 1905. Both they and the Waialua Company knew that they owned two life estates, each in one-third, and a contingent remainder in the James R. Holt one-third, should James L. Holt survive his father. They both also knew that Eliza Christian owned a contingent remainder in the [143] John Dominis Holt one-third, should she survive her father. In 1910, John Dominis Holt was in his 71st year and Eliza Christian was 24 years old and apparently in good physical health.

Prior to April, 1909, James L. Holt, attorney-in-fact for John Dominis Holt, was in correspondence with LAWRENCE KENTWELL, husband of Annie Kentwell, with whom John Dominis Holt and Eliza were living. (Ex. D-1). In March, 1909, John

F. Colburn was offering to Waialua Company, the James R. Holt interest for $60,000.00, (including the life interest and contingent remainder), and the John Dominis Holt interest for an additional $60,000.00 to be held in escrow at 5% per annum, ($3,000.00 per annum), during the life of John Dominis Holt. (Ex. D-3). In September, 1909, James L. Holt wrote to W. R. Castle, who was acting for Waialua Company, endeavoring to get that Company to finance the purchase of Eliza's interest for $50,000.00; that is to say, $10,000.00 down and the balance on the death of Eliza's father, and contemplating CONTINUING THE PAYMENT TO JOHN DOMINIS Holt at the rate of $100.00 per month during the balance of his life instead of $150.00 per month. (Ex. D-2). By this letter, Mr. Castle was informed that LAWRENCE KENTWELL had approved such a method of buying Eliza's share. James L. Holt wrote: "—I believe now is OUR opportunity to secure this one-third interest from my cousin (meaning Eliza) at a very reasonable figure—".

By February 17, 1910, James L. Holt was writing LAWRENCE KENTWELL to the effect that Waialua Company refused to negotiate further unless the Kentwells, John Dominis Holt and [144] Eliza would sell for $30,000.00. In this letter James L. Holt informed Kentwell: "—this offer I make you now is final and if the sale goes through it means that upon the payment to YOU FOLKS the sum of $30,000.00 YOU ARE OUT OF IT HOLUS

BOLUS in other words YOU will have to provide for uncle John as far as his weekly stipend is concerned. You will bear in mind that in the trust deed and agreement I have with uncle John it is provided that should Eliza survive her father she shall receive one-half the total that I can get for the one-third". (This appears to be interpolated by Holt as self justification for cutting in half his original offer of $60,000.00, also for saying nothing about the profit which he, Holt, expected to make on the deal, altho Holt had never acquired any right to share Eliza's contingency). The letter continued: "—Now it is an open question as you know whether she will survive him or not if she does YOU may be able to get more for her share than this amount I offer, if she should happen to die before uncle John YOU would be shut out of it entirely now you know 'a bird in the hand is worth a great many in the bushes'. The Waialua people have intimated strongly that should this attempt on their part to buy fail they will resort to a suit in partition for the sale of the land at public auction—". (Ex. D-5. Underscoring ours). (See Tr. page 1328, Mr. Goodale as a witness for Waialua denies any such contemplated action; but this letter together with the rest of the D. series of Exhibits were in the hands of Waialua Company before May 2, 1910 and their contents unrepudiated).

LAWRENCE KENTWELL answered this letter under date of March [145] 8, 1910, at Oxford and discusses the terms, saying: "—then SOME must

be paid over to Eliza. With regard to our releasing you from paying to Uncle John the $150.00 a month which we are now getting from Colburn, Annie said she would do so upon paying her $5,000.00—so that the whole thing will amount to $35,000.00 cash—". (Ex. D-6). In this letter from Kentwell to Holt, Kentwell indicates that he is under the impression that Waialua is dealing with Holt on the basis of a gross price of $75,000.00 cash. Waialua Company knew of this letter. The real terms to Holt were never discussed with the parties in England.

In none of this correspondence was the interest of Eliza Christian kept definitely separate as to price from the interests of the other parties in England, nor was its relative value ever honestly discussed with relation to the deal in Honolulu.

On March 3, 1910, Mr. Colburn at Honolulu wrote to Waialua Company stating: "—Mr. L. L. McCandless (of Honolulu) I am informed has made a definite offer to the Kentwells without any strings and if your Company fails to act promptly your opportunity to buy the lands will be nil—". He then urges a definite program and speed to get Waialua Company's attorney, who was then in Boston, Mass. to proceed forthwith to England, to procure an outright conveyance from the parties in England for $30,000.00 and to pay to Colburn the balance after deducting expenses "of the purchase price agreed upon as $120,000.00". (Ex. D-7).

Also under date of March 30, 1910, at Oxford, LAWRENCE KENTWELL wrote to James L.

Holt at Honolulu: "—there is some one else in the field and has offered Liza a better [146] proposition, and Annie and Uncle John are not required to release the $150.00 a month which she now gets from Colburn.—His name is McCandless.—Be sure and get the matter fixed as soon as you can as a delay will not be beneficial to either of us.—". (Ex. D-8. Underscoring ours).

Waialua Company cabled their attorney in Boston on April 8, 1910: "—Terms of agreement well known Link (meaning McCandless)—go as soon as possible". (Ex. D-10). Another cable was sent by Waialua to their attorney on April 11, 1910, advising that an agent for McCandless had left Honolulu bound for England and advising the Waialua attorney "to leave as soon as possible". (Ex. D-11).

An April 12, 1910, Colburn, Trustee, definitely offered to Waialua Company in writing to sell the James R. Holt life interest and the James L. Holt contingency together in one-third of the Waialua lands for $60,000.00 and also to sell the John Dominis Holt life interest and Eliza's contingency for an additional $60,000.00, less what it would cost to acquire Eliza's interest. (Ex. D-12). On the same date, April 12, 1910, James L. Holt at Honolulu cabled LAWRENCE KENTWELL at Oxford, England, purporting to accept LAWRENCE KENTWELL'S offer to convey the interests of the Kentwells, John Dominis Holt and Eliza Christian for $35,000.00. (Ex. D-14). On the same date, April

12, 1910, Waialua Company cabled their attorney at Boston: "—Waialua depends upon you. Have every reason to believe Link (meaning McCandless) will keep them supplied with money provided they can get (to) America where (they) expect to meet (agent for McCandless)—". (Ex. D-13). [147]

On April 13, 1910, the Company's attorney in Boston was further advised by cable that KENTWELL had accepted Holt's offer and that the attorney's credit was increased to $40,000.00. (Ex. D-15). And on April 16th, the Company's attorney cabled back advising insuring. (Ex. D-20). On this latter date Waialua Company cabled its attorney: "Eliza and John D. accept $30,000.00 must be inclusive of prospective interest. Annie Kentwell wants $5,000.00 her interest. Make less if possible. Must not exceed $35,000.00. Price to Waialua must be kept secret". (Ex. D-21. Underscoring ours).

On April 19, 1910, Waialua again cabled its attorney that KENTWELL had advised Holt that he, KENTWELL, "will agree to abide by you, though Link (McCandless) offers a better proposition". (Ex. D-22).

By April 26, 1910, the attorney for Waialua Company had arrived in England and on that date he cabled Waialua Company: "Demand payment in cash. Are objecting insurance. We do not consider advisable without (insurance). Agent for (McCandless) will not arrive until Monday". (Ex. D-25), to which cable the Company at once answered

by cable: "A delay is dangerous. We consider it advisable close immediately before arrival (agent for McCandless), excluding insurance.—McCandless has been notified our rights must be upheld". (Ex. D-27. Underscoring ours).

With the knoweldge of the Company and under the advice of its attorney in Honolulu, James L. Holt, by letter dated April 28, 1910, warned Mr. McCandless to refrain from interfering with any of the parties in England, Holt claiming an accepted contract of purchase and sale. (Ex. D-26).

[148]

All the foregoing correspondence was known to the representatives of the Waialua Company at Honolulu practically as it occurred. So far as the parties in England were concerned all of the negotiations were with LAWRENCE KENTWELL and depended for their validity upon the authority of LAWRENCE KENTWELL. Both he and James L. Holt at Honolulu must have known of Eliza's incompetency in fact, but disclosed no more of the true condition of Eliza than the correspondence and cables would have disclosed to a reasonable person.

What the situation would now be if Waialua Company had been content to deal with James L. Holt at arms length, only, after he, Holt, had acquired the rights of Eliza is not the question before this court. In fact the Company actively took over the negotiations of James L. Holt and through the attorney for the Company went forward and closed the transaction in England, using the situation Holt

had been able to create as a blood relative and attorney-in-fact for John Dominis Holt and, thereafter, using James L. Holt merely as a "dummy" grantee. The Company's representatives in Honolulu had notice that parties in England reposed confidence in James Lawrence Holt by reason of his blood relationship and his status as attorney-in-fact for John Dominis Holt. They knew that James L. Holt was securing a secret profit to himself and Colburn by reason of being able to induce LAWRENCE KENTWELL to get the parties in England to join him in selling the life estate and contingent remainder for $35,000.00, (quoted at Honolulu unknown to Kentwell and the others in England for $60,000.00). To be sure Holt in Honolulu had acquired an interest in the life [149] estate; but this was not greater than the interest quoted for Annie Kentwell at $5,000.00 and for which James Lawrence Holt was getting a proportionate part of $25,000.00 more, less expenses, (unknown to Kentwell).

If in fact Eliza had been a competent adult the custom of business men as generally understood might justify bargains of this character so far as the Company is concerned. A court of equity does not correct mere imprudence among adults competent to act for themselves. Granted that the attorney for the Company at England did not know the background as did the parties in Honolulu, still, do the actions of the representatives of the Company at Honolulu recommend themselves to a court of

equity faced with the problem of adjudicating the rights of an incompetent on the one hand and of the purchaser on the other?

Assuming that Waialua Company, including in that phrase all the representatives in Honolulu, were actually ignorant of facts indicating the feeble mindedness of Eliza Christian, and also assuming that the negotiations in England between the Company's agent and LAWRENCE KENTWELL were such as not to indicate Eliza's true condition, still that assumption of ignorance is not equivalent to entire bona fides when Waialua Company took over and managed for itself the final closing of this deal engineered by Lawrence Kentwell and James L. Holt. But, this factor may not be considered sufficient, alone, to over-balance the scales in favor of the incompetent if the price in fact was adequate. Hence the final question is: Was the price for Eliza's interest clearly adequate? [150]

ADEQUACY OF PRICE.

Without considering events subsequent to 1910, the market value of a fee simple unincumbered one-third interest in these Waialua lands in 1910 was clearly in excess of $130,000.00. This fact is established either by analysis of the evidence on the "ten-times-the-annual rental" theory of the respondents or upon analysis of the fee simple value of the other witnesses for both parties. The only incumbrance was the lease of the life tenant which would terminate upon his death. The first point of inquiry is

what was a one-third interest worth in 1910 if it were vested and the enjoyment thereof were merely postponed to the death of the life tenant?

The evidence shows that the life tenant had an expectancy of eight years. $1,000.00 postponed eight years at 6% would be presently worth $627.00; or $130,000.00 so postponed would be presently worth $81,510.00.

But the contingent interest in question might never become vested in Eliza. It depended upon Eliza surviving her father. Such possibility of survivorship could be protected by insurance on the life of the contingent remainderman, if he or she were willing to be insured and could pass an examination for insurance as to health and mental competency. (The attorney in England advised insurance. The representatives in Honolulu refused to wait). Taking into consideration the costs of such insurance, then $1,000.00 postponed for eight years and less the cost of insurance would be worth $552.14 presently; or $130,000.00 eight years hence protected by insurance would represent present cash in the sum of $71,778.20. [151]

These are facts, illustrated by the evidence in this case, which would have been material to a decision of a court of equity if called upon in 1910 to pass upon the propriety of authorizing a sale of an incompetent's contingency as of that date.

Again the evidence shows that the James R. Holt one-third life estate, together with James Lawrence Holt's contingency, were valued throughout the

1909-1910 negotiations at $60,000.00. Consider this in connection with life expectancy of eight years under the facts known in 1910. Rental was due on this life interest at $3,000.00 per annum which spread over eight year's expectancy would amount to $24,000.00. This sum had a present value in 1910 of approximately $18,000.00, which is arrived at by taking the value of $3,000.00 eight years hence plus $3,000.00 presently, dividing the same in behalf and multiplying by eight. This would place James Lawrence Holt's contingency at a figure between $40,000.00 and $42,000.00. His contingency was, no better or no worse than Eliza's under the facts known in 1910.

But, the Waialua Company maintains, that it paid $37,500.00 for Eliza's interest. In fact, it paid $2,500.00 to Albert Christian, as to which Eliza had no part and further as to which the correspondence showed the parties in England were willing to come to Honolulu to straighten out her affairs so as to make such payment unnecessary. But Waialua Company did not want the parties in England to come to Honolulu where the real facts would be known.

Also Waialua Company paid Annie Kentwell $5,000.00 for an [152] interest in the life estate that apparently was every bit as good as the interest of James Lawrence Holt in the same life estate and for which he was getting a proportionate part of $25,000.00 bonus, less expenses.

Also the $30,000.00, ostensibly for Eliza's share, was so described in the correspondence between Holt

and Kentwell, and known to the Company, as to be confused as to whether it was for Eliza personally or for "you folks", including Eliza and her father and even the Kentwells. The most that can be said is, that $30,000.00 was paid to the circle of relatives with whom Eliza was living and purported to be for Eliza's interest. The evidence does show that Eliza continued to live with the same circle of relatives, dependent upon them for support and actually supported by them either out of their own funds or out of this $30,000.00.

The respondent Waialua Company maintains that the market value of this contingency was nothing but a gamble, anyway. "People were not buying such gambles at a strictly mathematical market value" is the contention. The evidence shows, that Mr. McCandless, hearing that Eliza's interest, alone, might be bought for $30,000.00 immediately dispatched, at his own expense, a personal agent to England to see what could be done. And Waialua Company was informed that McCandless had made a better offer to Eliza, for her sole benefit, of more than this $30,000.00. Faced with this imperative fact Waialua Company, even though it, as a co-tenant with a peculiar knowledge of the value, and even though it knew of the secret profit to be made by James Lawrence Holt, took over the negotiations with Lawrence Kentwell [153] and now wants this court to find that it did pay adequate consideration and the fair market value. This Company did everything in its power to prevent the question of values coming out in the open at the time. A finding that

the question of this value is a "gamble" does not amount to an assurance that it was "adequate". Nor is a "gambler" entitled to protection in equity in preference to an "incompetent".

This court has used the expression that Waialua Company was a co-tenant. In some situations the conduct of a co-tenant is subject to scrutiny. It is very definitely settled in the law that a co-tenant cannot gain title by adverse possession against a co-tenant who does not know that he has an interest in the land. 7 R.C.L. page 849, Note 9. Also, to some extent, co-tenants are in relation of trust and confidence different from strangers. See illustration in 7 R.C.L. pages 857 to 861. For instance, one co-tenant cannot gain an advantage over another co-tenant by buying out adverse claims of others but must share such advantage upon reasonable contribution pro rata. In the case at bar, not only was James Lawrence Holt a co-tenant but was a blood relative of Eliza, attorney-in-fact for her father and supposed to know and report the situation in Honolulu. The Waialua Company was also a co-tenant in possession and knew of the betrayal of confidence which was going on between James Lawrence Holt and Lawrence Kentwell affecting Eliza. However, the matter of co-tenancy may be immaterial to this case. While such a situation among competent adults might not give jurisdiction for interference with the present title, yet this court is faced with the question whether respondent is in [154] such an equitable position as to require equity to withhold its natural protection to an incompetent.

The best that can be said is that the price paid was very much of a "bargain". UNDER THE CIRCUMSTANCES IN EVIDENCE THIS COURT CANNOT SAY THAT THE PRICE PAID BY WAIALUA WAS ADEQUATE. THE PETITIONER HAS OFFERED TO RETURN THE PURCHASE PRICE WITH INTEREST AND THE SITUATION IS SUCH THAT THIS CAN BE DONE.

The respondent, Waialua Company, calls the court's attention to another rule summarized from 2 Black on Rescission, etc., Section 258 where it is stated that the better rule seems to be that a deed to a SUBSEQUENT GRANTEE, who is innocent, for value, without notice will not be set aside, but a remedy will be given against the original grantee who had notice. The trouble with this rule is its application to the case at bar.

This court has found that it is not clearly shown that Waialua Company had actual notice of the incompetency of Eliza. In other words the court has proceeded on the assumption that Waialua Company was ignorant of her real mental status. But this fact does not justify the conclusion that the Company was a "subsequent grantee" or an "innocent purchaser". It is treated as innocent of knowledge of incompetency. That is the extent of its innocence.

To be sure the deed from the parties in England ran to James Lawrence Holt and the latter at Honolulu immediately conveyed to persons acting for the

Company. Waialua Company's money financed the whole transaction. Waialua Company's attorney attended to all the details. The fiction of James [155] Lawrence Holt as grantee was clearly indulged in to prevent disclosure of the real purchase price at Honolulu and to preserve to the Company the benefit of the negotiations which had been created through the confidence existing between Kentwell and Holt. This court is not now concerned with what might have been the situation had James L. Holt purchased his cousin's interest directly and then as owner had sold to Waialua. The fact is that Waialua Company, in its haste to close the purchase, took direct charge of the transaction; and, while attempting to preserve the form of a secondary position, it in substance became the purchaser in fact. It does not qualify as a "subsequent grantee".

On pages 24 to 27 of the reply memorandum of law, filed April 10, 1929, counsel for Waialua Company set out a strong summary for the Company. But, the underlying weakness of the whole chain of circumstances recited therein is the constant fact, clearly shown in the incidents themselves or by the clear weight of the testimony, that Eliza Christian was at no time an independent actor and manager of the ordinary affairs of her life. It clearly appears in the record that she was always under the constant DIRECTION and WILL of the Kentwells, who, assisted by the weakness of the father and the necessities of the cousin in Honolulu, were seeking to exchange Eliza's property for cash that would be

under their control. And these same persons who were in control of the conduct and decisions of Eliza are some of the same persons whom counsel for respondent hold up to scorn as witnesses. They were no more faithful or reliable as counselors, directors and guardians-in-fact than [156] they now appear as witnesses.

Again it is argued by the respondent that James L. Holt could have brought a suit for specific performance again Eliza. This argument is based upon the theory that the exchange of letters and cables between Holt and Kentwell creating a contract for the enforcement of which equity would lend affirmative aid. Without analysing this theory exhaustively the court might suggest several legal hurdles which Holt as a petitioner in equity would have to surmount: (1) Proof of the competency of Eliza; (2) Proof of the authority of Lawrence Kentwell to bind Eliza; (3) and showing of "clean hands" by a petitioner in equity. The less said about the possibility of such a suit for specific performance the better it will be.

Again it is argued that Waialua Company is entitled to hold possession against Eliza by reason of her signature as an assenting party to the 1905 lease. This position is entirely inconsistent with the real claim of ownership continuously and consistently made by Waialua Company which compelled petitioner to bring this suit. The Company had abandoned its status as lessee, so far as the "John D. Holt-Eliza one-third" is concerned, since May 2,

1910, under a claim of ownership. When demand was made for restitution and rents on behalf of petitioner subsequent to 1922, the Company maintained its position as owner.

Moreover, this court has found under the facts that Eliza has never been competent to act for herself. Again, in 1905 Eliza had no estate in possession subject to lease. Life [157] tenant lessors could not have bound her title, when and if her contingency should vest. The Company has never taken the frank position that it engaged in a gamble by attempting to purchase what it knew it could not purchase and intended all along to rely on its lease or rather its claim for a right to a lease. Claims of bona fide purchase and claims of survival of rights to enforce a lease accruing when Eliza's contingency vested in 1922, are too inconsistent for further consideration in this case. If rights survive to the Company as against Holt and the Kentwells, the Company is left to its remedies.

CONCLUSION.

From the findings heretofore made this court concludes, after weighing all the credible evidence and applying the law as heretofore analyzed:

1. That Eliza R. P. Christian, petitioner herein, has never been competent mentally to execute a conveyance of property;

2. That she was not competent mentally to execute the conveyance of May 2, 1910;

3. That, since Eliza was incompetent during the entire period from and before 1910 to date,

without a legal guardian until just prior to the filing of this proceeding, she could not be affected by the equitable doctrine of laches;

4. That the evidence does not clearly show that the respondent, Waialua Company, knew of such mental incompetency;

5. That Lawrence Kentwell and James Lawrence Holt did know the facts which would be notice of this mental incompetency; [158]

6. That the negotiations for the transaction in question were handled in England under the direction and control of Lawrence Kentwell;

7. That James Lawrence Holt with the assistance of John F. Colburn, his trustee, in Honolulu imposed upon his position as a blood relative of petitioner and attorney-in-fact for John Dominis Holt to enable him to induce a sale which was to afford him and Colburn a secret profit;

8. That the representatives of Waialua Company in Honolulu knew the facts concerning the position of James Lawrence Holt and John F. Colburn in the negotiations;

9. That Waialua Company with such knowledge took over the control and completion of such negotiations;

10. That the deed of an incompetent, being voidable only and good until directly attacked, can be cancelled in a court of equity;

11. That the petitioner as an incompetent is entitled to relief in this court unless it clearly

appears that the respondent Waialua Company is in a more substantial equitable position than petitioner;

12. That Waialua Company is not in the "subsequent grantee" class;

13. That the price paid by Waialua Company was clearly a bargain, and not adequate;

14. That Waialua Company did pay $30,000.00 in cash on May 2, 1910, to those who then had and continued to have charge of petitioner and the responsibility for maintenance of petitioner and who continued to maintain petitioner; [159]

15. That the persons who would have knowledge of the uses made of said moneys and the benefit, if any, derived by petitioner, are the persons who are substantially discredited in this court as witnesses;

16. That it would be inequitable to require respondent Waialua Company to show from such witnesses what actually became of the money and its benefits;

17. That the most that can be said for respondent Waialua Company is that, under the unqualified offer of petitioner, said respondent Waialua Company, (including in that phrase innocent stockholders who have dealt with it), should have restored to it said $30,000.00 with simple interest at the reasonable rate of 6% per annum from May 2, 1910, until the date of restoration, as a condition precedent to final cancellation.

By stipulation of the parties it was agreed at the hearing that the question of accounting for the reasonable rental value of an undivided one-third in said property in possession of said respondent Waialua Company since April 10, 1922, should await the determination of the major issue of the right of cancellation and avoidance of the deed of May 2, 1910, so far as petitioner is concerned. Sufficient evidence was introduced, however, to show that substantial rentals would be due in the event of cancellation. Also, sufficient evidence was introduced to show that the value of the interest in fee had substantially increased since 1910.

This is not a suit for partition. As a result of this decision petitioner would become a tenant in common with [160] Waialua Company. Petitioner did not assume that status prior to April 10, 1922. Improvements made by Waialua Company prior to that date were no more than it was entitled to make as the rightful owner of other interests, including the John Dominis Holt life estate; and until 1922 the Company was entitled to exclusive possession. Such improvements were also made to enhance the business of Waialua Company in connection with its rightful use of the premises.

It has been held that a tenant in common is not entitled to reimbursement from its co-tenant for improvements made solely to increase the business of the occupying tenant. 7 R. C. L. page 840, Note 19.

In accordance with the foregoing decision a master will be appointed, with such powers and duties

as may be ordered after due opportunity to the parties to be heard, to determine the reasonable rental value of a one-third undivided interest in fee in said lands commencing April 10, 1922 and thereafter to the date of his report; and upon such report, or other determination of such account, a decree will be entered entitling the petitioner to cancellation and avoidance as to her of the deed of May 2, 1910 and ordering a restoration to her by said Waialua Company of an undivided one-third interest in said lands upon condition that she reimburse the respondent Waialua Company by repayment to it of the sum of $30,000.00 with simple interest at 6% per annum from May 2, 1910, first by credit against rentals found to be due and if such rentals be insufficient then to pay the balance in cash; if said rentals are more than sufficient for such reimbursement to said respondent [161] then such decree shall include a money judgment to petitioner and against respondent Waialua Company for such excess. All matters relative to costs will be determined at the time of presentation of said final decree.

Dated, Honolulu, Hawaii, May 11, A. D. 1929.

[Seal] ALBERT M. CRISTY,
Second Judge, Circuit Court, First Circuit,
Territory of Hawaii. [162]

[Title of Court and Cause.]

Filed at 10 o'clock a. m. July 12, 1929. Sibyl Davis, Clerk.

MOTION TO DISMISS.

Now comes the WAIALUA AGRICULTURAL COMPANY, LIMITED, respondent in the above entitled cause, by its attorneys, ROBERTSON & CASTLE, and moves this Honorable Court that the petitioner's Bill of Complaint in said cause be dismissed upon the following grounds and for the following reasons:

1. That the petitioner has failed to produce evidence to sustain the material allegations in said bill so as to be entitled to any relief in equity.

2. That it appears from the evidence that there has been a failure to join necessary parties in said cause because of such nonjoinder. [163]

3. That it appears from the evidence that the petitioner has been guilty of laches beyond the period provided by the statute of limitations for law actions of like nature and further that it appears from the evidence that the movant and it predecessors in title have been in open, exclusive and adverse possession under a claim of right to the lands described in said bill for a period of more than ten years without interruption against the trustee of the estate of R. W. Holt.

4. That the petitioner has failed to offer to do equity.

This motion is based upon all the records and evidence in the above entitled cause.

DATED, Honolulu, T. H., July 12, 1929.

ROBERTSON & CASTLE,
Attorneys for Respondent, Waialua Agricultural Company, Ltd. [164]

[Title of Court and Cause.]

Filed at 10:35 o'clock a. m. Aug. 1, 1929. Sibyl Davis, Clerk. [165]

APPEARANCE OF ANNE HOLT KENTWELL.

COMES NOW, Anne Holt Kentwell, by her attorney, Barry S. Ulrich, and enters this her appearance in the above-entitled cause and submits to the jurisdiction of the court herein.

Dated at Honolulu, T. H. this 1st day of August, 1919.

ANNE HOLT KENTWELL.
By BARRY S. ULRICH,
Her Attorney. [166]

[Title of Court and Cause.]

SUPPLEMENTAL DECISION RE ACCOUNTING.

Filed at 9:00 o'clock a. m. Aug. 9, 1929. D. K. Sherwood, Clerk. [167]

On May 11, 1929, this Court filed its decision on the merits of petitioner's bill for cancellation of the

deed signed by her on May 2, 1910, finding in that decision that petitioner was entitled to cancellation upon reimbursement to the respondent, Waialua Agricultural Company, Limited, in the sum of $30,000.00 with simple interest at 6% per annum from May 2, 1910. In that decision the Court stated that it was prepared to appoint a master for the purpose of giving further relief incidental to the bill in the nature of an accounting for rents from respondent, Waialua Company, by reason of its ouster through exclusive possession under claim of title. This accounting was to ascertain the reasonable rental value for use and occupation of petitioner's undivided interest in the lands in controversy, from April [168] 10, 1922, the date when petitioner's interest ves d, to the date of final decree.

Upon further proceedings being had in regard to said accounting, it was agreed that the Court would hear the evidence relating to the reasonable rental value of petitioner's one-third interest in the land. Such hearings were had. The value of improvements, if any, were not considered; that being left to adjustment between the parties, or for consideration in any partition that may be had in the future.

This accounting divides itself into two major subdivisions. The so-called Holt lands so far as they have rental value, are concededly available for two major agricultural purposes: (1) lands available for sugar cultivation which were exclusively so occupied by respondent, Waialua Company, in connection with other lands used for its sugar plantation;

(2) lands available for pineapples cultivation which, from April 10, 1922 to January 1, 1923, were subject to numerous leases from Waialua Company, as lessor, to numerous tenants; and from January 1, 1923, under lease executed January 10, 1923, these lands have been leased (together with other lands) to the Hawaiian Pineapple Company, Limited, under a paid-up lease (Exhibit Ac-B1). This paid-up lease is for a 17½ year term commencing January 1, 1923, and has approximately eleven years yet to run.

The respondent, Waialua Company, has from the outset reserved its objections to any accounting. These objections have been already overruled in the record and will not be referred to any further in this decision. In other words it will be assumed in this decision, that the Court [169] has correctly required an accounting to be had. Moreover all evidence relative to rents received, or rental values, represents those values net above taxes. Hence no evidence was necessary relative to deductions for taxes.

PINEAPPLE RENTALS.

There is no dispute that Waialua Company received from numerous tenants, prior to January 10, 1923, rentals net above taxes, one-third of which (representing petitioner's interest in the Holt lands) is equal to $12,333.00.

Waialua Company thought it owned in fee simple, 25/27ths undivided interest in approximately

6,428.45 acres of Holt lands available for pineapple cultivation. It did control the other 2/27ths under leases from the other two Holt heirs. By the decision in this case it appears that 9/27ths of this claimed interest belonged to petitioner, leaving Waialua Company still the owner in fee of 16/27ths undivided interest in this area, and lessee of 2/27ths. In addition to the Holt lands, Waialua Company owned, or controlled through leasehold interests, approximately 5,674 acres more of pineapple lands. In other words, petitioner's interest in terms of acres would be equivalent to 2158.82 acres. Waialua owned or controlled in its own right the balance of the pineapple area, or 9991.18 acres.

As has been stated, the entire pineapple area had been, prior to 1922, leased out to many tenants. The major number of these leases were due to expire. The questions of rental values, leases and tenants for the future were of primary importance in the year 1922. Waialua Company thought it owned or controlled in its own right, the whole area of [170] upwards of 12,000 acres.

After a series of negotiations, Waialua Company and the Hawaiian Pineapple Company, executed an Option Agreement dated October 14, 1922. By this agreement (Exhibit Ac-A1) Waialua Company gave the Pineapple Company an option to lease said 12,000 acres, more or less, of pineapple lands according to definite terms of adjusted rentals for the period of lease, depending upon the actual number of acres finally to be determined, at a rental value

of $15 per acre per annum. This valuation was a substantial increase over former lease rentals. In consideration for this option the Pineapple Company paid Waialua Company $60,000.00 cash and gave Waialua Company the option to BUY a one-third interest in the Pineapple Company at an expressed valuation per share of stock (computed from then book values) which would make up the one-third interest in the Pineapple Company represented by the option. There is no question of fraud but, on the contrary, every evidence of good faith in fixing the rental valuation for the whole contemplated term at the agreed sum of $15 per acre per year. Nor is there any doubt but what the parties to this option agreement contemplated that, if the Pineapple Company took up its option for the lease, the present value of the rental distributed over the period of the lease should be computed at 5% discount rate, to arrive at a paid-up valuation which the Waialua Company could use in credit toward payment pro tanto for one-third interest in the Pineapple Company. The right of either company to take up its respective option was [171] not, however, made dependent upon the exercise of option by the other party.

Waialua Company exercised its right to purchase stock representing one-third value of the Pineapple Company. Immediately on October 14, 1922, Waialua Company purchased 23,000 shares of Pineapple Company stock under the option, paying

$1,214,000.00 in cash. Petitioner disclaims any interest in this purchase.

On November 28, 1922, in contemplation of a 58% stock dividend, Waialua Company elected to purchase 40,114 shares, (the balance of stock under its option), and on December 1, 1922, gave its promissory note to the Pineapple Company for $2,118,019.00 at 5% interest, in payment for such shares. This note was received and accepted by the Pineapple Company and the stock was issued to Waialua Company. On January 4, 1923, Hawaiian Pineapple Company elected to take up the lease of the pineapple lands under the option of October 14, 1922. On January 10, 1923, the lease was executed for the paid-up consideration computed on the actual acreage described therein (12,150 acres). The annual rental (net above taxes) was discounted at 5% for the term of 17½ years, making the present value (1923) for a paid-up lease $2,109,179.25, which amount was credited on the note of Waialua Company of December 1st., and the balance of said note, together with interest from December 1, 1922, to January 10, 1923, was paid to the Pineapple Company by Waialua Company in cash. Waialua Company then bought on the open market sufficient number of additional shares of stock to give it an actual one-third interest in the Pine- [172] apple Company.

Petitioner has elected to ratify this lease and demands an accounting from Waialua Company for her pro-rata share of the consideration for the lease.

Petitioner claims that the substance of the transaction of giving a paid-up lease from Waialua Company to the Pineapple Company involved the receipt by the Waialua Company of SHARES OF STOCK in the Pineapple Company; that is to say, that the Pineapple Company did not pay for this lease in cash, but really paid in shares of stock computed on agreed valuations of stock versus valuations of rental. Hence petitioner demands a computation of the number of shares of stock representing the rental value of the land; an allocation of a proper number of these shares to petitioner's interest; a further computation of the increase in this number through stock dividends; and finally a computation of cash dividends received on such allocated number of shares.

On the other hand the respondent, Waialua Company, contends that the transaction was handled in good faith on the basis of cash values and that the use of the paid-up rent valuation for the liquidation of its existing obligation on the stock purchased was in the nature of a personal investment. That is to say, the Waialua Company maintains that, if an accounting is due petitioner at all (which it denies), it would at the most be required to compute and pay petitioner's proportion of the cash rentals received. This would be based upon the proportion of 2,358.82 acres (representing petitioner's interest in Pineapple lands) to the total area leased, to-wit: 12,150 [173] acres. This proportion would represent (decimal) .17768 of the consideration named in the

lease, or $374,760.36. It must be remembered that this total represents rent at $15 per acre per year on 2,158.82 acres over a term of 17½ years discounted at 5% to equal the present value, as of January 10, 1923, of this paid-up rent.

Taking into consideration the entire history of the negotiations between Waialua Company and the Pineapple Company as evidenced by the series of Exhibits Numbered Ac-A1 to Ac-A29, this Court is of the opinion that the two companies were engaged in a mutually personal transaction. The Pineapple Company wanted an assured and substantial acreage for the production of its product over a substantial term of years. It also wanted the added strength which would be given by obtaining Waialua Company as a substantial, interested stockholder. Waialua Company wanted a fair rental return to be assured on areas of land suitable for pineapple cultivation which it thought it owned or controlled and was attracted also by the opportunity to increase its financial status by becoming a substantial stockholder in the well-established business of the Pineapple Company through cash and rental investments. The lease was so drawn as to make it possible for the Waialua Company to perform independent of any fluctuation of acreage by reason of the interruption from a paramount title holder as to any of the acreage involved in the total leased. In other words the lease was not dependent upon actual ownership of petitioner's interest in the Holt lands. To be sure there is nothing in the record to indicate

that Waialua Company, in 1922 and 1923, [174] had any doubt as to its title to 25/27ths of the whole area, but, the lease was not dependent for its performance upon the legality of that claim. The consideration negotiated between the parties was not dependent upon sole ownership of any particular acreage. The rental value of $15 per acre per annum, adopted in figuring the consideration for the lease, was arrived at as a fair valuation for the rental of that land for pineapple cultivation, regardless of the character of title and interests in the title. It is the only valuation of pineapple land in the record and must be assumed to be a fair and bona fide rental valuation per acre.

Under the facts in evidence this Court finds as a fact that the fair rental value of land suitable for pineapple cultivation in the Holt area, was and is $15 per acre per year. The Court further finds that the stock transaction between Waialua Company and the Pineapple Company was an investment transaction personal to the Waialua Company acting in its own behalf and not as agent or trustee in fact for any other person; that the paid-up consideration named in the lease from Waialua Company to the Pineapple Company (Exhibit Ac-B1) represented the fair paid-up rental value for the lands included within the lease as of January 10, 1923 discounted at 5%; that Waialua Company received this paid-up rental on January 10, 1923; and that the proportion of such rental so received which would represent the petitioner's interest in the lands

leased is and was as of January 10, 1923 the sum of $374,760.36, received by Waialua Company. The Court further finds that the annual [175] rental, if not anticipated by this method of computing the whole period, would have been, (at $15 per acre on 12,150 acres), $182,250.00 per annum for the whole; or $32,382.30 per annum for the petitioner's undivided interest in the pineapple lands so leased to the Hawaiian Pineapple Company by the Waialua Company. The Pineapple Company is in possession under the lease. Petitioner has elected in this proceeding to ratify and take under the lease its proportion of rents received by Waialua Company.

SUGAR RENTALS.

There is no dispute that the respondents exclusively occupied and used 1623 acres of cane lands during the entire period covered by the accounting. This represented the entire area of Holt lands suitable for such use. The question in dispute is as to what rental per acre the Court should adopt as the fair rental value, (such values being, also, NET ABOVE TAXES).

Petitioner's witness, Mr. Gibb, placed the fair rental value average over the whole Holt area at $15 per acre per annum. Respondents contend that the leases of Pioneer Company lands in Maui are the most similar and show a rental value of approximately $7 per acre. While the Pioneer acreage shows crops produced in excess of the crops

produced on the Holt area the exhibits also show the existence of factors making cultivation of the Pioneer area a much more difficult factor and hence more expensive than on the Holt area.

On the other hand the most favorable leases on Oahu introduced by the petitioner affected lands having a much lower average elevation than the Holt areas, as well as [176] having greater productivity.

Respondents show that, at a 5% basis for rental, the production records on the Holt area would average approximately $12.50 per acre. There are also in evidence leases to Waialua Company of lands adjoining the Holt area ranging from $14 to $20 an acre, the higher rentals being on lands having an average mean elevation lower than the average Holt lands. Taking all the factors into consideration including the advantage of having all the Holt lands together, the relative productivity and the rents paid by respondent for nearby leases, $14 per acre seems to be a fair average rental value for the area used by the respondent, Waialua Company.

There being 1623 acres of Holt lands used for sugar purposes and the petitioner having a one-third interest, this would represent an interest equivalent to 541 acres which would yield at $14 per acre a fair average annual rental of $7,574.00 per annum, net above taxes for lands suitable for sugar cultivation.

THE LAW.

In giving full relief in cases involving cancellation of instruments, a Court of equity may settle the accounting between the parties relative to the rent and income and adjust these accounts equitably between the parties. See—Bozarth vs. Banister, 136 S. W. 902 (Ky.); Campbell vs. Spears, 94 N. W. 1126 (Ia.). If this had been a case in which there had been no apparent alienation of Petitioner's interest by petitioner herself and respondent, Waialua Company, had taken exclusive possession under [177] claims arising from others than petitioner, there would clearly have been a legal ouster, as a result of which petitioner would have been entitled to recover not only her share of rents received from a third party, but also for the value of the use and occupation by the ousting co-tenant. See the cases collected in the notes in 27 A. L. R. 184-273; 39 A. L. R. 408-410; Zapp vs. Miller 109 N. Y. 51; Hannah vs. Carver 121 Ind. 278, 279; Adkins vs. Adkins 85 S. E. 490, 491.

It was also conceded in argument by the attorneys for respondent, Waialua Company, that the Statute of Anne, giving a co-tenant out of possession an action for share of rents, is applicable as part of the common law of Hawaii. See—Peterson vs. Kaanaana, 10 Haw. 384, 387; Haw. Com. etc. Co. vs. Waikapu, etc. Co., 9 Haw. 75, 80; Helemano Land Co. vs. Forster, 20 Haw. 252

There are certain findings in the decision on the merits heretofore filed which must always be kept

in mind. The petitioner was found to have been continuously incompetent to execute a conveyance of her interest on May 2, 1910, or to ratify it at any time thereafter. The Court concluded in that decision that the deed in question was voidable on direct attack in equity. Until that deed is cancelled and set aside by this proceeding, the strictly legal rights of the parties would not be affected. When the deed is cancelled and set aside by order of this Court, Petitioner's legal estate of inheritance becomes no longer encumbered by the purported conveyance of 1910.

If there had been no attempt to deal with petitioner's estate, it would have vested on April 10, 1922. In accord- [178] ance with the findings of fact in this decision, it appears that Waialua Company by its exclusive possession since 1922, has received either from third parties or from its own use, the equivalent of very substantial rents. Its right to retain such rents or benefit by such rental value is founded solely upon the deed which this Court has found the petitioner entitled to have cancelled. But the petitioner has at all times been incompetent under the findings of this Court. It would obviously be inequitable to permit the respondent, Waialua Company, to retain the rents and profits flowing from the interest of the petitioner under the cancelled deed. It would also be inequitable to penalize petitioner to the extent of losing the rental value of her interest since April 10, 1922, for delay in asserting her rights. She

was incompetent to act for herself. Until a proper guardian was appointed there was no one competent to act in her behalf either to repudiate the prior deed or to demand present income.

On the other hands, the respondent, Waialua Company, acting in reliance upon its supposed rights under the deed was apparently in rightful possession. It was certainly not acting as agent in fact for the petitioner. Moreover, even if there had been no deed from petitioner to respondent a legal relationship of tenancy in common would not be construed as a trust relationship in the face of open, hostile adverse claim by Waialua Company. Hodgson vs. Federal Oil etc., 274 Y. S. 15; Kennedy vs. De Trafford, 1897 A. C. 180; Kalamaku vs. Wharton, 16 Haw. 228-223. At law the rents and [179] profits appropriated by a tenant in common in possession are not trust funds. Daniel vs. Daniel, 106 Wash. 659, 181 Pac. 215 at page 222. A tenant in common is not a common law bailiff. Wheeler vs. Horne, Willes 208, 125 English Reprint 1135.

The liability under the Statute of Anne is for debt. British Mutual Investment Company vs. Smart, L. R. 10 Ch. Ap. Cas. 567 (1875); Blood vs. Blood, 110 Mass. 545; Bird vs. Bird, 14 Fla. 424, 21 Am. Rep. 296; Bates vs. Hamilton, 144 Mo. 1, 64 A. S. R. 407; Hudson vs. Coe, 79 Me. 83, 1 A. S. R. 288; Henderson vs. Eason, 17 Q. B. 701; Scott vs. Guernsey, 60 Barb. (N. Y.) 163, 180.

From the foregoing cases it is clear that one who is in fact and law a tenant in common and who is in

open, hostile and exclusive possession is not a trustee of the ousted co-tenant but is regarded as a debtor of the ousted co-tenant to the extent of the excess rentals received and also to the extent of the rental value of the ousted co-tenant's interest which was used by the ousting co-tenant.

Applying this legal principle to the equitable situation at bar it is impossible to see by what theory Waialua Company could be construed to be a trustee for a party whose interest it thought it had purchased. A finding in this proceeding that Waialua Company dealt with an incompetent and has no right to retain the fruits of such a dealing cannot be used to create a trustee relationship that did not exist in fact. All that the equities demand is that Waialua Company turn over to petitioner through her proper guardian in this proceeding, the reasonable rental value of petitioner's interest which petitioner [180] would have been entitled to receive but for the inequitable deed. See, 3 Black on Rescission (2d Ed.) Sec. 634.

Moreover, in the findings of fact herein, this Court has determined that the transactions between Waialua Company and the Hawaiian Pineapple Company were in the nature of a personal investment by Waialua Company so far as the stock transaction was concerned. This conclusion is strengthened by the fact that the transactions took place in 1922 and 1923, more than five years before Waialua Company was informed by the demand of petitioner's guardian that petitioner's former deed was repudi-

ated on the ground of incompetency. Further the facts show that Waialua Company invested by purchase and sale in the stock of the Pineapple Company before the Pineapple Company finally bound itself to take the lease in question.

It has been held that, where a purchase has been made and a legal obligation to pay has been created, the use of funds due another to make payment thereafter does not of itself create a resulting trust. Botsford vs. Burr, 2 John Ch. 405; French vs. Shaplor, 83 Ind. 265, 43 Am. Dec. 67; Tilford vs. Torrey, 53 Ala. 120. Neither by analogy to the legal situation which would have obtained between existing tenants in common under the foregoing authorities, nor by the analysis of the situation existing in fact at the time Waialua Company was negotiating with the Pineapple Company for the lease of 1923, can this Court discover any equitable principle under which petitioner could be given the right to be a sharing participant in the personal investment ability of the officers and directors of Waialua [181] Company. Petitioner is entitled in equity to credit and payment for the reasonable rental value of her interests, enjoyment of which she has been inequitably deprived. So much of that rental value as Waialua Company has received from third parties should be computed in its cash value and credited to petitioner's account.

A co-tenant at law has an election to ratify a lease by a fellow co-tenant and claim a proportionate share of the benefits, or to repudiate the lease and

assert rights against the lessee. Helemano vs. Forster, 20 Haw. 252 at page 254; 17 A. & E. Encyc. 674; Starks vs. Sickes, 8 Gray 609 (Mass.), 69 Am. Dec. 270; McNeely vs. So. Penn. Oil Co. 52 S. E. 480 (W. Va.); Enterprise Oil Co. vs. National Transit Co. 172 Pa. State 421, 52 A. S. R. 746.

The petitioner has elected in this proceeding to ratify the lease of 1923 between Waialua Company and the Pineapple Company. This ratification by the petitioner cannot have the force and effect to impose at this time a trustee relationship that did not in fact exist at the time of the execution of the lease. The only effect of such ratification would be to confirm the lease for its term so far as petitioner is concerned and to entitle the petitioner on the other hand to use the consideration upon which the lease was figured for the purpose of computing the proportionate rental value of her interest which the lessee proportionately gave for the right to use the land and for which Waialua Company was compensated in excess of its own interest. These companies figured this value bona fide on a cash basis. This cash basis represented fair rental values. The fact that the values so agreed upon were [182] used by Waialua Company for a personal investment program does not change a debt pro tanto into a trust.

Confusion is introduced into this computation by the fact that Waialua Company accepted in 1923 the then present value as of that date for all the rentals to become due under the full term discounted

at 5%, so that Waialua Company could obtain immediate credit for such paid-up value on its investment program. This paid-up rental value as of 1923 was arrived at by discounting the annual rentals during the full term at 5%. Hence while the consideration named in the lease is the fair cash value as of that date, it is not necessarily conclusive on the equities of the case, as to the sum which today would represent by fixed proportion, what petitioner has been deprived of in fair rental value on the basis of the lease.

Respondent, Waialua Company, has called the attention of the Court to Section 3585 R. L. 1925, on the subject of interest, maintaining that this Section is controlling upon this Court in determining what is equitably due to the petitioner. This Section provides in part for a statutory rate of interest "* * * for money due on settlement of accounts, from the day on which balance is ascertained and for money received to the use of another from the date of a demand made". There is no doubt that this Section applies in actions at law. Waialua Agricultural Company vs. O. R. & L. 19 Haw. 446. But this proceeding is neither an action at law to settle admitted accounts and the striking of a balance, nor is it strictly an action or a substitute for an action for money had and received. The object of this [183] proceeding is to put an adjudicated incompetent and a party who has inequitably dealt with such incompetent in as near an equitable status quo as can be done upon final decree. The

incompetent's deed is to be cancelled. It has been determined in the former decision herein, that such cancellation shall entail the reimbursement to Waialua Company of the $30,000.00 it paid on May 2, 1910, with interest thereon at 6%, as an equitable condition to such cancellation. On the other hand respondent has used the incompetent's property which (1) as to the sugar lands has a definite, computable, annual rental value from the date petitioner's interest would have vested; (2) as to the pineapple lands, respondent received prior to January 1, 1923 a definite sum representing the rental value of petitioner's interest (se Ex. Ac-C); and (3) respondent obtained the advance payment as of January 10, 1923, of a large sum of cash which can be apportioned as of that time as representing the THEN rental value of petitioner's interest.

Computing these values as of January 10, 1923, we have the following cash equivalents representing what the incompetent would have been entitled to if she had had proper representation:

(1) 9/12ths of one year's rental on Sugar Lands (See pg. 10 herein)	$ 5,680.50
(2) Proportionate rentals from miscellaneous pineapple leases, (1/3 of Ex. Ac-C) (pg. 3)	12,333.00
(3) Proportionate share of paid-up cash rental under the lease (pg. 7)	374,760.36
Total of the above as of January 10, 1923	$392,773.86

[184]

Forward		$392,773.86
To be credited against the above:		
	$30,000.00	
Interest at 6 % on above from May 2, 1910 to January 10, 1923. (12 yrs. 8 mos. 8 days)	$22,840.00	
Total deduction by way of credit		52,840.00
NET value as of January 10, 1923		$339,933.86

The statute on interest heretofore referred to, primarily refers to a situation where competent parties have left their accounts in abeyance or where the statute is obviously based on the assumption of competent parties impliedly leaving one in control of monies had and received until demand is made for payment. See an analogous statute construed in Armijo et al. vs. Neher. 72 Pac. 12, 13 (N. Mex). This Court is unable to see how it fits a situation where a Court of equity is attempting to arrive at an equitable adjustment demanded by the case at bar. The respondent has received value really belonging to an incompetent in the eyes of equity. While it should not be penalized by excessive sums, yet it should not be permitted on the other hand, to anticipate the use of such sum without cost, simply because the incompetent has had no proper representation heretofore.

Respondent has objected to disclosing what profits it may have made in anticipating the use of rights which are herein found to have belonged equitably to petitioner. This Court has sustained

such objection on the grounds that respondent was neither the agent nor trustee of petitioner and further, that the real question is the reasonable rental value of petitioner's interest. But in sustaining this objection this Court is not in the position of permitting this refusal [185] to disclose profits to operate to the extent of blinding the Court to the fact that the use of money has value or to the further fact that a cash substitute for use and occupation in each of the years from 1922 to date as well as paid-up rentals for the unexpired term of the pineapple lease has to be arrived at in fairness to the petitioner.

Respondent anticipated the revenue in the case of the pineapple area. The proportionate amount of that anticipated revenue is easily computed as of 1923. To bring that figure to its fair equivalent of the rents which petitioner has been deprived of the use of, a reasonable interest rate is the simplest method of computation; not that interest is due as a matter of right, but that interest on sums in hand, obtained by both hostile use and by anticipating revenue, is a proper and equitable means of arriving at the value of petitioner's interest as used during these years as well as the value of the use which petitioner has agreed to during the balance of the years of the pineapple lease. The record shows that first mortgage rates in Hawaii vary from 7% to 8%; that the companies used a 5% rate for discount purposes; that a 6% rate is often used in connection with mortality tables; that Waialua Company actu-

ally profited on the pineapple investment greatly in excess of any of these rates. A 6% rate seems to this Court an equitable rate to aid in arriving at the equitable compensation due herein.

Also from the record herein, it appears to be customary to figure and pay rentals on some form of annual or semiannual basis. Hence the adoption of annual stops on sugar rentals appears equitable. [186]

Respondent's attorneys introduced evidence of what a realtor would be entitled to charge for negotiating a lease. No such expense, however, was incurred or paid by Waialua Company. Nor did it act as, or ever admit that it was, the agent in fact of petitioner. It acted on its own behalf, using in part what now appears to have ben equitable the petitioner's lands.

Evidence was, also, given as to the fee paid to the attorneys for Waialua Company for drawing the lease. It is obvious from the record that the major service of attorneys in this connection involved conforming a usual lease to the intricate terms of respondent's personal investment program and the protection of both parties necessary by reason of anticipating rentals in present payment to assist the investment. No segregation of this expense was attempted in the evidence. Hence no deduction is made for any arbitrary proportion thereof.

CONCLUSION.

Hence it is the conclusion of the Court based upon the foregoing discussion that in addition to the can-

cellation of the deed of May 2, 1910; respondent shall account with and pay to petitioner, the NET SUM heretofore set forth as of January 10, 1923, to-wit: $339,933.86, plus 6% interest from that date to the date of the decree; and that respondent further acount and pay to the petitioner additional rentals for sugar lands at the rate of $7,574.00 per annum from January 10, 1923, with interest at 6% per annum, with annual stops, to the date of the decree. It is further [187] decided that under the election of petitioner to ratify the lease with the Hawaiian Pineapple Company, that the decree shall provide that petitioner is in all respects bound not to interfere with the use of the lands described in the lease to the Hawaiian Pineapple Company according to the terms of said lease.

That a decree issue in accordance with the decisions herein.

Dated at Honolulu, this 9 day of August, 1929.

[Seal] ALBERT M. CRISTY

Second Judge, First Circuit Court, Territory of Hawaii.

In the Circuit Court of the First Judicial Circuit Territory of Hawaii.

E-2915.

Bill for Cancellation, Accounting and Incidental Relief.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN von HOLT, her Guardian,
Petitioner,

vs.

WAIALUA AGRICULTURAL COMPANY, LTD., a Hawaiian corporation, and JAMES L. HOLT,
Respondents.

DECREE.

Filed at 10:00 o'clock A. M., Oct. 16, 1929, D. K. Sherwood, Clerk. [189]

Pursuant to and confirming the Decision of this Court heretofore made and entered herein on, to-wit, May 11, 1929, and pursuant to and confirming the Supplemental Decision of said Court made and entered on, to-wit, August 9, 1929.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That that certain deed dated May 2, 1910, by and between John Dominis Holt, Eliza R. P. Christian, Annie Holt Kentwell and Lawrence K. Kentwell, therein named as Grantors, and James L. Holt, therein named as Grantee, said deed being

described and referred to in the Petition and Amended Petition on file herein, a copy of which deed being annexed to said Amended Petition and made a part thereof, and marked Exhibit "B", be and it is hereby declared and adjudged cancelled, annulled and void and of no effect as to Eliza R. P. Christian named as Grantor [190] therein, being the same Eliza R. P. Christian, Petitioner herein.

2. That, as against all parties personally appearing herein and submitting to the jurisdiction of this Court herein, to-wit, Waialua Agricultural Company, Ltd., James L. Holt, and Annie Holt Kentwell, the said Eliza R. P. Christian is and has been since April 10, 1922, the owner in fee simple of an undivided one-third (1/3) interest in and to the following described property:

(a) A portion of the Ahupuaa of Paalaa being a portion of Apana 34, L. C. A. 7713, Royal Patent 4475, containing an area of 12018.81 acres more or less (said parcel of land being more particularly described in Exhibit I hereto annexed and made a part hereof);

(b) The lands described in Royal Patent 973 to Robinson et al, containing an area of 1902 acres;

(c) The lands described in Royal Patent 431 to Kanohanui, containing an area of 100 acres;

(d) The lands described in Royal Patent 235 to Jerome and Louis Johnson, and Topliff, containing an area of 36 acres;

(e) The lands described in Royal Patent 238 to J. F. Anderson and F. Davis containing an area of 25.8 acres;

(f) All kuleanas or grants lying within the above described land.

3. That Petitioner herein, as tenant in common of said land with Waialua Agricultural Company, Ltd., since April 10, 1922, do have and recover from said Respondent Waialua Agricultural Company, Ltd., (1) as past and future rentals for Petitioner's interest in the pineapple lands described in that certain lease (dated January 10, 1923) by and between Waialua Agricultural Company, Ltd., and [191] Hawaiian Pineapple Company, Ltd. (being Exhibit Ac-B1, in this case), said lease expiring July 1, 1940, and (2) as and for rentals upon all other lands hereinabove described as to the date of this decree, the total sum of $540,906.07; payment of the foregoing sum together with any other sums included in this decree, to be made to the duly appointed and acting guardian of the Petitioner herein;

4. That, better to effectuate this decree, the Respondent, Waialua Agricultural Co., Ltd., do deliver up to the Clerk of this Court, for cancellation as to Petitioner herein, the original of that certain deed of May 2, 1910, hereinabove referred to, and for endorsement thereon by said Clerk,

"The above and foregoing deed of May 2, 1910, is hereby cancelled, annulled and void as to Eliza R. P. Christian named as Grantor

therein, by reason of the incompetency of said Eliza R. P. Christian, By Order of the Court under Decree in the Circuit Court of the First Judicial Circuit Territory of Hawaii, in Equity 2915, said Decree being dated ———.

———————————

Clerk".

And, further, that Respondent, Waialua Agricultural Company, Ltd., by appropriate indenture do release and forever quit-claim unto the said Eliza R. P. Christian, Petitioner herein, all of the right, title and interest in an undivided one-third (1/3) interest in fee in the said lands, referred to in paragraphs 2—a, b, c, d, e and f, hereinabove, purported to have been conveyed and granted by the Petitioner herein by virtue of said deed of May 2, 1910; [192]

5. That Petitioner herein, having accepted, ratified and adopted that certain lease by and between Waialua Agricultural Company, Ltd., and Hawaiian Pineapple Company, Ltd., dated January 10, 1923, as above referred to in paragraph 3, hereof, the rights of said Hawaiian Pineapple Company, Ltd., under and by virtue of said lease are in all respects confirmed as to the Petitioner's interest in said lands;

6. That this decree is granted without prejudice to such rights, if any, as said Respondent, Waialua Agricultural Company, Ltd., may have against any persons other than said Eliza R. P. Christian; and also without prejudice to an accounting in the event

of partition by or between Petitioner and said Waialua Agricultural Company, Ltd., for or on account of permanent improvements, if any, which may have been made by said Respondent upon the lands covered by this decree, the question of such improvements, if any, being expressly left open herein.

7. That petitioner do further have and recover of the Respondent, Waialua Agricultural Company, Ltd., the sum of $2,256.53, taxed as costs herein.

Dated at Honolulu, T. H., this 16th day of October, 1929.

By the Court:

[Seal] DOROTHY M. FEDER
Clerk.

Approved:

ALBERT M. CRISTY
Presiding Judge. [193]

EXHIBIT I.

DESCRIPTION OF PORTION OF APANA 34 R. P. 4475 L. C. A. 7713

LOT NO. 1: Beginning at a pipe on the east side of the Government road, and being the north west corner of Grant 607 to J. S. Emerson, the co-ordinates of said pipe referred to the "Maile" Triangulation Survey Station being north 18397.35 feet and west 4913.52 feet. Thence running by true azimuths as follows:

1.	201	Degrees	00′ 00″	1,589.2	Feet along Government road;
2.	264	"	27′ 00″	595.85	" along stone wall;
3.	275	"	42′ 00″	356.40	" do.
4.	266	"	45′ 00″	407.24	" do.
5.	210	"	15′ 00″	382.04	" crossing the Halemano stream to its east bank;
6.	255	"	30′ 00″	146.5	" along stone wall on the south side of L. C. A. 2856 Apana 1 to Kea;
7.	235	"	15′ 00″	260.7	" along stone wall on the south side of L. C. A. 2856 Apana 1 to Kea;
8.	151	"	45′ 00″	312.2	"
9.	210	"	45′ 00″	385.4	" along stone wall and the boundary of Kawailoa;
10.	214	"	45′ 00″	427.0	" along the same;
11.	240	"	45′ 00″	521.4	" along the boundary of Kawailoa;
12.	225	"	40′ 00″	484.7	" along the boundary of Kawailoa to a stone marked "A";
13.	269	"	45′ 00″	483.8	" along the boundary of Kawailoa;
14.	220	"	15′ 00″	170.3	" along the same;
15.	220	"	45′ 00″	156.0	" along the boundary of Kawailoa to the center of Opaeula stream, the co-ordinates of said point referred to Maile Triangulation Survey Station being North 22,242.2 feet and West 649.36 feet;

16. Thence running along a south-easterly direction along the center of the Opaeula Stream in all its windings to a bolt in large rock, the direct azimuth and distance being 283 degrees 06′ 30″ 16,939.9 feet, the co-ordinates of said bolt referred to the "Maile"

Triangulation Survey Station being north 18,400.4 feet and east 15,849.1 feet;

17. Thence running along a southeasterly direction along the center of the Opaeula Stream in all its windings to a point which is by direct azimuth and distance 283 degrees 11′ 28″ 20,087.8 feet; [194]

18. 341 Degrees 17′ 38″ 1,688.0 Feet along the land of Kawailoa to U. S. A. Triangulation Survey Station "Peahinaia", the co-ordinates of said Survey Station referred to Maile being North 12,217.6 feet and East 35,948.3 feet;

19. 341 " 17′ 38″ 6,450.0 Feet along the West side of the remainder of Paalaa-Uka called Ili of Helemano to the North bank of the Helemano stream;

20. Thence running along the south side of Paalaa-Uka called Ili of Helemano, in a southeasterly direction along the north bank of the Helemano stream to a point known as "Kaape Fishing Place", the direct azimuth being 281 degrees 34′ 00″ 4,304.0 feet;

21. 11 Degrees 00′ 00″ 900.0 Feet along the West side of Paalaa-Uka;

22. 50 " 00′ 00″ 2,700.0 Feet along the West side of Paalaa-Uka to a point, and from which point the Helemano Triangulation Station marked by a 1-14″ Galvanized pipe is by true azimuth and distance 115 deg. 30′ 560 feet, and the co-ordinates of said Triangulation Station referred to Government Survey Triangulation Station "Maile" being North 2866.9 feet, and East 39,488.2 feet;

23. Thence running along the top of a ridge, being the dividing line betwen the Paalaa and the Wahiawa watersheds to a Forest Reservation Monument marked by a galvanized pipe, the direct azimuth and distance being 68 degrees 31′ 40″ 4252.2 feet; the co-ordinates of said Monument referred to the Triagulation Station "Maile" being North 1,069.3 feet and West, 33,036.4 feet;

24. Thence running along the top of said dividing ridge to the south bank of the Poamoho Stream, the direct azimuth and distance, being 76 degrees 10′ 47″ 1658.4 feet;

25. Thence running along in a westerly direction along the south bank of the Poamoho Stream in all its windings, and being the boundary of Grant 973 to Robinson and Lawrence to a point near the intake of the Poamoho ditch, the direct azimuth and distance being 130 degrees 52′ 20″ 3,068.9 feet; [195]

26. Thence running along in a south westerly direction in all its windings along the south bank of the Poamoho stream and the boundary of Grant 973 to Robinson and Lawrence to the northeast corner of Land Court Application No. 262, the direct azimuth and distance being 74 degrees 13′ 02″ 11,614.11 feet;

27. Thence running westerly following the South bank of the Poamoho Stream in all its windings and the boundary of Land Court Application No. 262 to a point on the Kaheeka boundary 151 degrees 30′ 30″ 500.0 feet from an iron pipe and concrete monument on the south side of the Poamoho Gulch,

which is in turn 270 degrees 38′ 14,130 feet from the Maile Triangulation Station, the direct azimuth and distance being 96 degrees 9′ 7,079 feet;

28.	151	Degrees 30′ 30″	10,305.0	Feet along the Kaheeka boundary to a bend marked by an iron pipe and concrete monument from which monument, the Maile Triangulation Station is by true azimuth and distance 43 degrees 1′ 30″ 13,014 feet;
29.	123	" 41′ 00″	8,572.6	Feet along Kaheeka boundary to a pipe in concrete;
30.	141	" 45′ 00″	1,504.0	Feet along the Kaheeka boundary to the northeast corner of Grant 607 to J. S. Emerson, marked by a concrete monument;
31.	113	" 11′ 00″	3,720.0	Feet along Grant 607 to J. S. Emerson to an iron pipe and concrete monument;
32.	122	" 43′ 00″	2,744.5	Feet along Grant 607 to J. S. Emerson to the point of beginning and containing a gross area of 12,020.47 acres, and a net area of 12,002.53 acres after deducting the following privately owned lands;

R. P. 907	L. C. A. 2735	Apana 2 to Pakanaka,	6.38 acres
R. P. 2841	L. C. A. 3868	Apana 1 to Pila	6.86 "
R. P. 888	L. C. A. 8349	Apana 1 to Koha,	1.62 "
R. P. 1490	L. C. A. 4318	Apana 1 to Kalapaku	3.08 "
		TOTAL	17.94 acres

And further deducting from said 12,002.53 acres an undivided twenty-five twenty-sevenths interest in an area of five (5) acres sold by warranty deed of the Waialua Agricultural Company, Limited to the

Territory of Hawaii dated July 19, 1926, Recorded Book 837, Pages 168, 169, said total of five acres being bounded as follows:

Beginning at an iron pipe at the east corner of this piece and on the South side of road reservation, the coordinates of said point of beginning referred to Government Survey Trig. Station "Maili" being 1978.8 feet North and 19475.3 feet East, as shown on Government Survey Registered Map No. 2056, and running by true azimuths: [196]

1. 20° 10′ 300.0 feet to an iron pipe;
2. 110° 10′ 726.0 feet to an iron pipe;
3. 200° 10′ 300.0 feet to an iron pipe;
4. 290° 10′ 726.0 feet along road reservation to the point of beginning.

Area 5-00/100 acres.

Known as the Helemano School Lot.

LOT 2. Beginning at a point of the west side of the Government road marked by a concrete monument, and being the northeast corner of Grant 236 Apama 2 to Davis the co-ordinates of said concrete monument referred to Maile Triangulation Survey Station being 18,424.1 feet north and 4,955.16 feet west, and the azimuth and distance of the Station 1 of Lot 1 from said concrete monument being 302 degrees 43 minutes 49.5 feet; thence running by true azimuths:

1. 146 Degrees 40′ 1183.2 Feet along the north side of Grant 1630 to Kawaioloa;
2. 249 " 29′ 1294.0 Feet along the land of Kawailoa;
3. 21 " 17′ 1547.6 Feet along the west side of Government road to the point of beginning;

Area 17.13 acres more or less.

LOT 3. Beginning at the southeast corner of this piece and station 5 of Lot 1 the co-ordinates of said point referred to the "Maile" Triangulation Survey Station being 19,926.1 feet north and 2,987.74 feet west, thence running by true azimuths:

1.	195	Degrees	00′	136.0 Feet along the west bank of the Helemano stream;
2.	105	"	00′	264.7 Feet along the south side of Apana 1 of L. C. A. 2735 to Pakanaka;
3.	16	"	00′	122.8 Feet along the same;
4.	79	"	30′	87.0 Feet along the same;
5.	353	"	00′	85.2 Feet along the same;
6.	266	"	45′	330.0 Feet along Lot 1 and line of old stone wall to point of beginning, area 1.23 acres, more or less.

LOT 4. Beginning at the southeast corner of this piece at a point on the boundary of Lot 1 said point being the southwest corner of Apana 1 of LCA 2735 to Pakanaka, the true azimuth and distance of said point from Station 4 of Lot 1 being 95 degrees 42 minutes 149.8 [197] feet and the coordinates of said Station 4 of Lot 1 referred to the "Maile" Triangulation Survey Station being 19,903.0 feet north and 3,394.3 feet west, thence running by true azimuths:

1.	208	Degrees	30′	177.6 Feet along Apana 1 of L. C. A. 2735 to Pakanaka;
2.	132	"	15′	66.0 Feet along the southerly bank of the Helemano Stream;
3.	22	"	41′	212.3 Feet along the east side of Apana 4 of L. C. A. 2856 to Kea;
4.	275	"	42′	46.2 Feet along Lot 1 and stone wall to point of beginning, area 0.24 acres, more or less.

LOT 5. Beginning at a southerly corner of this piece, by true azimuth and distance from Station 3 of Lot 1 190 degrees 27 Minutes 249.3 feet and the co-ordinates of said station of Lot 1 referred to "Maile" Triangulation Survey Station being 19,938.6 feet north and 3,750.95 feet west, thence running by true azimuths:

1.	121	Degrees	19′	57.15	Feet;
2.	210	"	00′	92.40	"
3.	296	"	30′	83.80	"
4.	45	"	00′	102.30	" along the west side of Apana 10 of L. C. A. 7342 to Kuokoa to point of beginning, area 0.15 acres more or less.

LOT 6. Beginning at a southeasterly corner of this piece on the southeasterly boundary of Apana 1 of L. C. A. 2859-B to Kaluhia, by true azimuth and distance from Station 3 of Lot 1 192 degrees 22 minutes 553 feet and the co-ordinates of said Station 3 of Lot 1 referred to the "Maile" Triangulation Survey Station being 19,938.6 feet north and 3,750.95 feet west, thence running by true azimuths as follows:

1.	224	Degrees	30′	59.4	Feet along the easterly side of L. C. A 2859-B to Kaluhia;
2.	304	Degrees	53′	65.50	Feet;
3.	32	"	30′	33.70	"
4.	106	"	55′	80.80	" to the point of beginning, area 0.07 acres more or less.

LOT 7. Beginning at the south corner of this piece, at a point which is by true azimuth and distance from Station 3 of Lot 1, 192 degrees 29′

572 feet, the co-ordinates of said Station 3 of Lot 1 referred to the "Maile" Triangulation Survey Station being 19,938.6 feet north and 3,750.95 feet west, thence running by true azimuths: [198]

1.	150	Degrees	15′	105.6	Feet;
2.	255	"	00′	74.6	"
3.	344	"	02′	77.65	"
4.	48	"	30′	54.8	" to the joint of beginning, area 0.13 acres, more or less.

LOT 8. Beginning at the westerly corner of this piece on the east boundary of L. C. A. 2879 Apana 2 to Kuaiwa and being by true azimuth and distance from the northeast corner of said L. C. A. 2879 Apana 2 to Kuaiwa 36 deg. 30′ 133.4 feet and from Station 3 of Lot 1, 178 degrees 10′ 828 feet the co-ordinates of said Station 3 of Lot 1 referred to the "Maile" Triangulation Survey Station being 19,938.6 feet north and 3,750.95 feet west, thence running by true azimuths.

1.	328	Degrees	00′	153.8	Feet;
2.	235	"	15′	75.2	"
3.	144	"	45′	176.13	"
4.	36	"	30′	70.°	" along the east side of L. C. A. 2879 Apana 2 to Kuaiwa to the point of beginning, area 0.27 acres more or less.

LOT 9. Begining at the easterly corner of this piece and being by true azimuth and distance from the north easterly corner of L. C. A. 2859-B Apana 1 to Kaluhia 45 degrees 00′ 33 feet and from Station 3 of Lot 1, 202 degrees 10′ 752 feet,

the co-ordinates of said Station 3 of Lot 1 referred to the "Maile" Triangulation Survey Station being 19,938.6 feet north and 3,750.95 feet west, thence running by true azimuths:

1. 45 Degrees 00′ 74.6 Feet along the west side of LCA 2813 to Kauloaiwi;
2. 145 " 00′ 124.7 Feet;
3. 213 " 00′ 59.4 "
4. 317 " 10′ 135.2 " to the point of beginning, area 0.19 acres, more or less.

LOT 10. Beginning at the southwest corner of this piece, same being the southeast corner of Apana 2 of L. C. A. 2920 to Hika, the true azimuth and distance of said initial point from Station 3 of Lot 1 being 164 degrees 45′ 663.0 feet, the co-ordinates of said Station 3 referred to "Maile" Triangulation Survey Station being 19,938.6 feet north and 3,750.95 feet west, thence runing by true azimuths as follows: [199]

1. 162 Degrees 08′ 87.1 Feet along the west side of L. C. A. 2920 Apana 2 to Hika;
2. 247 " 00′ 37.0 " along same;
3. 261 " 00′ 29.0 " along the west side of L. C. A. 2879 Apana 2 to Kuaiwa;
4. 348 " 45′ 82.5 " along same;
5. 68 " 00′ 56.1 " along the same to point of beginning, area 0.12 acres, more or less.

LOT 11. Beginning at the southeasterly corner of this piece and the northeast corner of L. C. A. 2879 Apana 1 to Kuaiwa the true azimuth and distance from Station 3, of Lot 1, being 177 degrees 45′ 392 feet, co-ordinates of said Station 3

referred to "Maile" Triangulation Survey Station being 19,938.6 feet north and 3,750.95 feet west, thence running by true azimuths:

1.	92 Degrees	08′	66.0 Feet	along the north side of L. C. A. 2879 Apana 1 to Kuaiwa;
2.	148 "	00′	51.5 Feet	along the east side of L. C. A. 2887 Apana 2 to Leleahina;
3.	248 "	30′	132.0 Feet	along the south side of L. C. A. 2879 Apana 2 to Kuaiwa;
4.	17 "	22′	99.0 Feet	along the west side of L. C. A. 2813 to Kauloaiwi to the point of beginning, area, 0.15 acres, more or less.

LOT 12. Beginning at the southwest corner of this piece on the east side of the Government Road and being Station 2 of Lot 1, the co-ordinates of said Station 2 referred to "Maile" Triangulation Survey Station being 19,881.0 feet north and 4,344.0 feet west; thence running by true azimuths:

1.	264 Degrees	27′	271.9 Feet	along stone wall;
2.	200 "	00′	180.2 Feet	along the west side of L. C. A. 7342 Apana 11 to Kuokoa;
3.	102 "	04′	243.0 Feet	along the south side of L. C. A.'s 2859 Apana 2 to Kaluhiā and 2920 Apana 1 to Hika;
4.	21 "	00′	264.0 Feet	along the east side of the Government Road to the point of beginning, area 1.23 acres, more or less.

[200]

TOTAL AREA.

Lot 1, 12,002.53 acres less 25/27 of 5 acres for Helemano School Lot	= 11,997.90	Acres
Lot 2	17.13	"
Lot 3	1.23	"
Lot 4	0.24	"
Lot 5	0.15	"
Lot 6	0.07	"
Lot 7	0.13	"
Lot 8	0.27	"
Lot 9	0.19	"
Lot 10	0.12	"
Lot 11	0.15	"
Lot 12	1.23	"
	12,018.81	"

[201]

In the Supreme Court of the Territory of Hawaii.
October Term, 1930.

No. 1920.

Appeal from Circuit Judge, First Circuit.
Hon. A. M. Christy, Presiding.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. VON HOLT, her Guardian,

Petitioner,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED, an Hawaiian Corporation, and JAMES L. HOLT,

Respondents.

OPINION OF THE SUPREME COURT.

Filed April 18, 1931 at 11:40 o'clock A. M. J. A. Thompson, Clerk, Supreme Court. [202]

Argued February 2, 3, 4, 1931.
Decided April 18, 1931.

PERRY, C. J., BANKS AND PARSONS, JJ.

Deeds—validity—mental incompetency.

The deed of a person who is mentally incompetent to execute it but whose incompetency has not been judicially ascertained and is otherwise unknown to the beneficial grantee is not void solely because of the incompetency of the grantor but merely voidable.

Same—cancellation—restoration to status quo.

In a suit to have such a deed canceled it will be set aside regardless of the adequacy of the consideration and the good faith of the beneficial grantee in dealing with the incompetent if such grantee can be restored to his status quo ante and no injustice will be done him by the cancellation of the deed. [203]

Same—same—same—increase in value of land.

In a suit to cancel the deed of a grantor, who is mentally incompetent to execute it, conveying a contingent interest in land, the restoration of the beneficial grantee to his status quo is not prevented by the increased value of the interest conveyed, which increase is the result of natural causes; nor is the fact that such grantee has, during his occupancy of the land, after receiving the deed, placed permanent improvements thereon an impediment to his restoration to his status quo if upon cancellation of the deed he and his grantor become tenants in common of the land. In such circumstances he can by a suit for partition secure full restoration of or compensation for such improvements.

Insane Persons—laches—statute of limitations.

Laches is not imputable to a person whose mind is so enfeebled as to incapacitate him from executing a valid deed to an interest in land, nor is such person barred by our statute of limitations if in a suit for the cancellation of the deed more than six years from its execution have elapsed.

Contingent Remainders—demisability.

A contingent remainder in land is demisable.

Insane Persons—deeds—cancellation—merger of prior lease.

When in a suit for the cancellation of a deed on the ground of the mental incompetency of the grantor the deed is canceled and it appears that prior to the deed the grantor had joined in a lease of the land to the bene- [204] ficial grantee, the term of which had not expired at the time of the trial, the lease is not merged in nor extinguished by the deed.

Pleading—issues.

When in a suit to cancel a deed to an interest in land the deed is set aside because of the mental incompetency of the grantor and it appears that prior to the deed the grantor had joined as a consenting party in a lease to the respondent, the term of which had not expired at the time of the trial, and the issue of whether the lease was invalid as to her because of her mental incompetency was not within the issues presented by the pleadings, a decree for rents against the respondent who claimed the right of possession under the lease is erroneous.

Landlord and Tenant—rents—assignment.

An instrument in writing which is valid as an assignment of the rents derivable from land should, although for statutory reasons it might be void as a conveyance of an interest in the land itself, be given effect as an assignment of

rents when giving it such effect is necessary to the accomplishment of the purpose the assignor intended to accomplish. [205]

OPINION OF THE COURT BY BANKS, J.

This is a suit in equity brought by Eliza R. P. Christian, an alleged mental incompetent, by her duly appointed guardian, for the cancellation of a deed of conveyance of a contingent interest in land situated on the Island of Oahu, and for other incidental relief. The circuit judge before whom the case was tried entered a decree canceling the deed so far as it related to the petitioner and as incidental relief decreed that the Waialua Agricultural Company, one of the respondents, pay to the guardian of the petitioner the sum of $540,906.07. The Waialua Agricultural Company brings the case here on appeal from the decree.

The deed in question was executed by the petitioner at Oxford, England, on May 2, 1910, the grantee being James L. Holt, a respondent in the instant case. At that time the petitioner, by virtue of the will of her grandfather, R. W. Holt, long deceased, and by virtue of her being the only surviving child and prospective heir of John Dominis Holt, who was then living, and who under the will of R. W. Holt was given a life estate, was the owner of an estate in remainder in an undivided one-third interest in the lands described in the deed. This interest passed by successive conveyances from grantor to grantee until on July 20, 1921, it came finally to rest in the Waialua Agricultural Com-

pany, where it remained unchallenged until May 8, 1928, when the present suit was brought.

On April 10, 1922, John Dominis Holt, the life tenant, died leaving surviving him as his sole heir at law his daughter, Eliza R. P. Christian. Upon the happening of this event Eliza's contingent estate in remainder ripened into a vested estate in fee simple. The deed executed by her on May 2, 1910, purported [206] to convey to James L. Holt, the grantee, not only the interest which she at that time had but also purported to convey every interest which she might thereafter acquire under the will of R. W. Holt. If this deed was valid and binding on her it divested her of all interest in the property, whether present or prospective, and vested it in her grantee and by subsequent conveyances it became the property of the Waialua Agricultural Company.

The question therefore that lies at the very threshold of the case is whether Eliza Christian, at the time she executed the deed of May 2, 1910, had sufficient mental capacity to make a valid and binding conveyance of her interest in the lands described in the deed. This is a question of fact, upon which much conflicting evidence was taken. The circuit judge made the following findings regarding the petitioner's mental competency: "Upon the weight of the testimony and the credibility of the witnesses, as herein summarized in connection with the question of competency, the court finds: I. Eliza (Holt) Christian, petitioner, neither was, nor is, an idiot,

a lunatic or UTTERLY imbecile. 2. She was and is, however, a person of undeveloped intellect, incapable of forming a reasoned judgment or understanding, incapable of comprehending her own right to an independent status, the extent or nature of property or of her property interests, the value of money, or the ordinary matters of life essential to a reasonable degree of independent living. 3. She had insufficient mental capacity to comprehend the difference between $100.00 and $1,000.00; between $30,000.00 or $60,000.00 for her individual rights; or to comprehend the difference between payment to her individually, for her sole disposition, of any such sum or sums and payment to her circle of relatives and under their control; or whether $30,000.00 or any sum [207] was for her rights as distinct from the rights of others involved in the deal; or the difference between present payment of income and future payment of principal; or to understand that she had rights distinct and independent of her father or of Annie Kentwell. 4. She could not possibly have comprehended, even with advice worthy of trust, the elements necessary to form an independent judgment or to exercise a reasonable measure of choice or of will relative to the value of cane land, pineapple land, ranch land or any kind of land in any quantity; or of postponed rights therein as opposed to present interests; or even the elementary character of her rights and direct the disposition of what she owned. 5. The court is convinced that Eliza did not have the most ele-

mentary capacity to understand and judge her rights and protect herself from undue influence and fraud; and that at no time was she an independent actor with a knowledge of her rights. 6. In short, she was mentally incompetent to execute a conveyance in 1910 or at any other time within the scope of the evidence and the law in this case."

It has long been the rule in this court that "in equity cases, on appeal, while the findings of the circuit judge are given weight and under certain circumstances, especially on pure issues of fact, would be allowed to control, the supreme court nevertheless is authorized and has always exercised its right and duty to weigh the evidence and to make its own findings." Godfrey v. Kidwell, 15 Haw. 526 (1904). See also Cha Fook v. Lau Piu, 10 Haw. 308 (1896).

In compliance with the duty imposed upon us by law we have carefully read the entire transcript of the evidence, consisting of some three thousand typewritten pages, bearing upon the petitioner's mental condition, with the view of determining [208] whether she was incapable of making a valid conveyance of her interest in the lands in question. We have weighed this evidence to the best of our ability and from it have reached the conclusion presently to be stated.

Of course a deed to land executed by a person who is sui juris is presumed to be valid and will not be upset because of the mental incompetency of the grantor unless the incompetency was of so

marked a degree as to be the equivalent of a lack of capacity to make a binding contract. The highest degree of intelligence is not necessary to bind the grantor, nor is the lowest degree essential to the avoidance of the deed. Between these extremes lies the fate of the deed. In Black on Rescission and Cancellation, § 262, the following rule is given: "No particular degree of mental capacity is essential to enable one to execute a valid deed or contract, and no arbitrary standard is or could be established. No very high measure of intelligence or acumen is required, and on the other hand, a person may be mentally incompetent for business and legal purposes although he is not absolutely an idiot nor totally devoid of reason. The test generaly agreed upon is this: A deed or contract cannot be set aside on the ground of insanity if the person had sufficient mental capacity to understand in a reasonable manner the nature of the particular transaction in which he was engaged and its consequences and effects upon his rights and interests. It is sometimes said that a person has capacity to make a deed if he has sufficient mind to be capable of transacting ordinary business affairs, or of pursuing his own ordinary business in his usual manner. But this is too loose. The proper inquiry is whether he was capable of understanding and appreciating the nature and effect of the one particular act or transaction which [209] is challenged. 'It is evident that it requires less capacity to do a simple act, or make a contract involving no com-

plications, than it does to make understandingly an agreement involving complications and imposing various obligations. One may have but little business capacity, and a weak intellect or impaired faculties, and yet be capable of making a binding contract. All that the law requires to make the contract effectual is that a man should so have possession of his reason as to know the character of the act he is about to perform and be capable of carrying that act into effect.'" In Mann v. Keene Guaranty Savings Bank, 86 Fed. 51, 53, the circuit court of appeals for the eighth circuit, in discussing the capacity of a grantor to execute a deed, announced the following rule: "The question is not whether her mental powers were impaired. It is not whether or not she had ordinary capacity to do business. It is whether she had any—the smallest—capacity to understand what she was doing and to decide intelligently whether or not she would do it." The respondent characterizes this as "a classic statement of the law upon the subject in the federal courts."

With this test in mind we will review the evidence with such fullness of detail as seems necessary to an adequate understanding of this phase of the case. In doing this we will consider the evidence which reflects Eliza Christian's mental condition at different periods of her life.

Eliza Christian (at that time Eliza Holt) was born December 30, 1885, at Makaha, which is a rural section of the Island of Oahu. In the early nineties

(perhaps 1893) she was brought to Honolulu. In 1894, when she was about eight years of age, she was placed, as a pupil and boarder, in school at the Catholic convent in Honolulu. She remained in this institution [210] until July 1, 1899. After leaving the convent school and after a year's interval in Honolulu she went in 1900, with her cousin, Annie Holt, to San Jose, California, where she attended a Catholic girls' school at Notre Dame convent. In the summer of 1901 she returned to Honolulu and for a time attended school at St. Andrew's Priory. She left this school before completing the term. Thereafter she remained in Honolulu until 1906 when she went with her father and her cousin, Annie Kentwell, nee Holt, and the latter's husband, Lawrence Kentwell, to the mainland of the United States. In 1909 she went, again with her father and the Kentwells, to Oxford, England, where she was living in 1910, when the deed in question was executed. Since the execution of the deed she has continued to live in England, residing, except for about four years in London, with the Kentwells at Oxford.

The evidence relating to Eliza's mental state during the first period of her life, that is, during the time she was living at Makaha, is rather scant. Several of the witnesses who saw her from the time of her birth up to the time she came to Honolulu with her father, and who had observed her as a child playing with other children, testified that she was no different from her associates and seemed to

be entirely normal. Typical of this testimony is that of Keawekane, his wife, Kaluna Keawekane, Solomon Keaupule, and two or three other Hawaiians who worked on the Holt ranch. Keawekane testified that he had opportunity to observe Eliza from the time she was a very little girl until she grew up to be a big girl and that there was no sign that she was "ihepa," "lolo" or "pupule," and that there was nothing unusual about her to attract his attention; that she was like other people. His testimony was corroborated by his wife, Kaluna Keawekane, and the other witnesses just referred to. The testimony of Mrs. Helen [211] Cushingham, however, gives a very different picture of Eliza's mentality during this period. Mrs. Cushingham went to Makaha in 1886, about a year after Eliza's birth. During the time that Eliza and her father were there she lived within a very short distance of them and frequently saw Eliza up to the time she finally came with her father to Honolulu. There was no school in the neighborhood and Mrs. Cushingham not only taught her own children but also undertook to teach Eliza, who was about two or three years older than Mrs. Cushingham's eldest child. "I tried to teach her the alphabet and numbers and I found that she was a hopeless case;" that she was never able to learn her alphabet nor to learn anything about numbers and was not able to carry on a sensible or rational conversation. There is also testimony of other witnesses who knew Eliza during her early childhood which corroborates that given

by Mrs. Cushingham. For instance, Mrs. Abbie Fablan testified that she remembered Eliza at Makaha when she was five or six years old. She saw her there on several vacations and that she was "simple." "If you call her and say 'hello' to her she won't talk to you; can't get anything from her." She was "simple like, ihepa. * * * When you talk to her she doesn't say anything and grinning like that. * * * Q. By 'ihepa' what do you mean? A. Simple-minded." Mrs. Marie Aylett testified that she first knew Eliza in 1886 as a babe in arms and that from the first time she knew her she did not have that normal appearance like other normal children. "She was always funny, very silly. * * * She was a feeble-minded child,—not normal." Speaking of the time when Eliza was between three and four years of age the witness testified that she tried to teach her "just a few objects, such as 'chair,' 'table,' and I would make a statement for them to repeat. The others would do it [212] but she can't. She would laugh and go out and spin around." She never played with toys or dolls or marbles.

During the second period of Eliza's life, which includes her pupilage at the Catholic school in Honolulu, her contacts were much more numerous and frequent than during the first period, consequently the evidence portraying her mental condition is more voluminous. Many of the witnesses who testified concerning Eliza, her habits, her personality and her progress during this period were women

who as young girls attended the school during the time she was there, or a portion of the time she was there, and who knew her more or less intimately and observed her more or less closely. There is some conflict in the testimony of these witnesses. In a general way, however, some of it tends to show that Eliza in her companionship with other pupils and her behavior in school was not unlike her associates. The testimony of Mrs. Minnie Paloney illustrates the tendency of this testimony. This witness attended the school for about a year and a half, during which time Eliza was also a pupil. She remembered that during the play period Eliza engaged in the same games and in the same way as the other girls. She was very polite and never quarrelsome. She had drawing lessons and sewing lessons and did her work like the other girls. The witness had seen her read, knew she dressed herself and generally took care of herself. Her table manners were always good. Basing her opinion on the acts which Eliza did in her presence and her conversations with her the witness said that she was just like the other girls. She played with them and talked with them and would do everything the other girls would do. She knew little or nothing about Eliza's progress in school or her proficiency in her studies. Mrs. Fisher, who was a schoolmate of Eliza's [213] during the period we are now considering, testified more in detail and more positively as to her mentality. According to her recollection she was entirely normal—in her studies, her habits

and her associations with other pupils. She took communion, attended confession, memorized the catechism and recited her lessons. She also wrote in the witness's autograph album. Mrs. Fisher testified that she and Eliza were in the same class, beginning with the primer, were promoted together, ending finally in the third class. Mrs. Beatrice Ross testified that she and Eliza were at school together for about five years. Her testimony is not so specific as Mrs. Fisher's but tends to show that she was normal girl. There were several other witnesses who testified to the same effect.

In sharp contrast with this testimony is the testimony of the Catholic Sisters who were connected with the school during Eliza's attendance. Sister Anne Joseph testified that she remembered Eliza Holt at school very well. She was there about six years. She could not make any progress in her studies. The witness was with the Sister who was teaching Eliza but she could not learn. She was taught reading but she could not be promoted. She was not an idiot and she was not insane. "She acted like a little girl, a little child, a girl playing with little ones in the school. She was very polite; had a kind heart * * * would say 'good morning, Sister,' * * * 'good afternoon, Sister,' * * * and 'thank you.' * * * She sat there. She could not recite by heart, she could not memorize words like that." The witness never saw her take communion. Sister Mary Augusta testified: "I saw the father bring her" (Eliza) "in school. I asked her if she

wanted me to talk to her, because she was kind of silly. * * * Only to see her you could tell there was something the matter." [214] This witness further testified that Eliza was like a little child in school. She never learned anything. She was in school four or five years but never learned anything. She could repeat words after the teacher but the witness thought she could never remember. The witness also thought she "never wrote." When asked if at the time Eliza left the school she had progressed any the witness said: "No, no, just the same. She never learned anything." Sister Teresa testified that she was a pupil in the school when Eliza was there and that she and Eliza were playmates; that they were together in school about two years. When asked to describe her the witness said: "She really couldn't learn, she was not able to learn. She was easily influenced and she had a very kind heart and you could easily influence her. She often spoke about her cousin Annie. I think she was of that spirit that had a mind that could not be really developed,—a kind of small child. * * * She must have been may be about eleven or twelve." She was then asked the question: "And you would describe her as having the mind of a small child?" and her answer was: "Yes, not able to be developed." Sister Leocadia testified that while Eliza was at the school she had an operation on both eyes and that she (the witness) nursed her after the operation. She said Eliza talked with her "a little, but not very sensibly; like a little child." Sister

Margaret testified that she knew Eliza but was never her teacher; that she remembered that she was not like a normal girl as to her mind but she was put in a class with bigger girls "because we couldn't leave her with the small children all the time." Sister Regoert testified that while she had nothing to do with Eliza she knew her well and that she had a childish mind. "If you tell her to do a thing and she would not. She cannot judge for herself what was right and [215] what was wrong, but she was never unpleasant or difficult to manage." The witness did not remember what she had to do with Eliza but remembered that she had something to do with her and that her eyes were crooked. She remembered that she was a "small child when she was big."

The third period of Eliza's life comprises the time (about a year) when she was a matriculant at a Catholic girls' school at Notre Dame convent in San Jose, California. There is not much evidence concerning her during this period. Mrs. Rose Wight (nee Cunha) testified that she was a pupil at Notre Dame during the time that Eliza was there. She knew her quite well and too *f*requent walks with her in the garden. The witness thought Eliza was then about fourteen years of age and that she was not in the first grade but in a sort of infants' class before the first grade. When asked what she had observed regarding her ability to read, the witness said: "On many occasions—probably it will need a little explanation. I was rather fond of the

children and it was our custom to take walks during recreation time. We had school hours so long we had to walk in the garden, and very often I would ask Eliza to walk with me, and on many occasions she would read me her lessons. When she had a successful day she seemed very happy of accomplishment." She did "very simple reading of four and five words, but she felt she was accomplishing something and was anxious to let me see." When asked to describe the kind of girl Eliza was with reference to mentality, the witness replied: "Of course I don't really think I am capable of judging but from a lay-person's viewpoint I would say she had the mind of a child of six." Speaking of the kind of conversations they had, the witness said: "Conversations that would suit a child of six. She seemed to be a little child [216] and I liked to go out and talk with her about things that would interest her, things about the garden and about animals, things that would make an interesting story."

After returning to Honolulu from Notre Dame Eliza Christian entered St. Andrew's Priory as a pupil. During her pupilage there it was discovered that she was pregnant and she was obliged to leave the school before the completion of the term. Mrs. J. J. Smiddy, who was at St. Andrew's Priory during a portion of the time that Eliza was there, testified that she knew her and had occasion to observe her among other girls. When asked what impression Eliza made on her she said: "Well, she was a girl that gave me the impression of being

below the normal,—feeble-minded." When the witness spoke to her "she didn't respond at all, just hung her head, or just act foolish, you know." When asked if she remembered what class Eliza was in she said: "No I can't tell you. I know she was not in any particular class because she never would attend classes very well. She was not a very bright child and I don't think she was ever made to study there, or she could not." The witness remembered that she played a lot with the younger children, children about "seven,—five, six or seven;" could not remember just how old she was—thought perhaps "eight, nine or ten." Mrs. Daisy Sanders testified that she knew Eliza at St. Andrew's Priory and that she was about fourteen or fifteen years old at that time—that she thought she (Eliza) was in the "baby class." When asked what Eliza's condition was as she remembered it, the witness said: "Well, most people would—the new name for it now is 'feeble-minded,' but we used to call her feeble and stupid, the girls in school used to. * * * She didn't want to mingle with the girls, and if you asked her anything she didn't know [217] what to answer you, whether to say 'yes' or 'no;' kind of timid. * * * Sometimes she would answer and sometimes she wouldn't as if she didn't know." Sister Lydia Margaret, whose deposition was taken in Glendale, Ohio, testified that she had formerly lived at St. Andrew's Priory in Honolulu, having substituted as a teacher; that while she was there she knew a girl then attending the priory named Eliza

Holt but that she never had occasion to teach her. She did, however, have occasion to observe her during the period she was at the priory. She had no recollection what class or grade she was in; did not know whether she was ever promoted. When asked if she remembered whether Eliza carried on a rational or sensible conversation with her or with anyone else in her presence, the witness said: "No, she didn't. She was kind of feeble-minded. * * * She was very childlike all the time, different from the other girls. * * * She was mentally deficient." Miss A. Z. Hadley testified that she had been teaching at Lahaina and came to Honolulu to spend the Christmas holidays and had to remain, on account of the plague, until the Easter holidays; that during this time the priory was practically her home and that she was there for about four months and saw Eliza Holt—that she was sure she would have noticed it if she had not been normal.

Eliza left St. Andrew's Priory probably in the early part of 1902—certainly before April, because in that month she gave birth to an illegitimate child. From the time she left the priory until she departed in 1906 with her father and her cousin, Annie Kentwell, and the latter's husband, Lawrence Kentwell, for the mainland of the United States, she lived with relatives and friends in various sections of Honolulu. This constitutes the fifth period of her life. During this period [218] many things of importance to Eliza transpired and the state of her mental capacity with reference to them and other-

wise is revealed by the testimony of many witnesses.

As we have just seen, her child was born in April of 1902. On May 27 and 28, 1902, she testified as the complaining witness in a rape case. On June 12, 1902, she appeared in court with her father, John D. Holt, and Mr. and Mrs. George Sea, and signed an agreement for the adoption of her child by the Seas. On January *we,* 1903, she was married at the Catholic Cathedral to Albert Christian, with whom she lived for a short time, probably six months, and from whom she was never divorced. In the latter part of 1903 proceedings were brought in the circuit court at Honolulu to annul her marriage. On January 24, 1904, her child, which had been adopted by the Seas, died. On March 4, 1905, Judge Gear handed down his decision denying the petition of Annie Kentwell for the annulment of Eliza's marriage. On March 17, 1905, Eliza consented, over her own signature, to a lease that had been executed by other parties in interest of the Holt lands at Waialua to the Waialua Agricultural Company for a period of twenty-five years from April 1, 1905. On August 31, 1906, she executed a written instrument assigning to Annie Kentwell all her (Eliza's) income and profits from the Holt estate, including rents under the Waialua lease just referred to, during the life of Eliza, in consideration of Annie Kentwell's agreement to support her during that time. On the same day Eliza leased to Annie Kentwell certain interests in land at Makaha.

Mrs. John H. Wilson, the wife of John H. Wilson,

who was, at the time her testimony was given, mayor of the City and County of Honolulu, gave this picture of Eliza when she was in [219] an advanced state of pregnancy: "When she was pregnant, one Sunday I was going with my mother to church, and just out here, at the old Opera House we had before, past that was the old Gibson home, and she was sitting out with a couple of boys playing marbles. Of course she couldn't stoop and sat flat on the ground, and I said, 'Eliza, what are you doing here?' and then the boys started to run with the marbles and she started to cry, just like a child, and I called to them and they brought them back when I called, and I said, 'How many marbles have you here' and she said, 'I don't know.' * * * They didn't give back all the marbles, but they ran, and that is all she got." In answer to the question, "Was her condition of pregnancy noticeable at that time?" Mrs. Wilson said, "Oh, yes." This witness also testified that she knew Eliza when she was four or five years old—saw her frequently when she and her father would come to Honolulu and that she also saw her often after she and her father moved to Honolulu, and after her marriage to Albert Christian she saw them once in a while, passing them on the street. She remembers seeing Eliza at the court house during the proceeding to annul her marriage and she also remembers seeing her when she lived with the Kentwells at Waikiki just before their departure for the mainland. The impression she got of her during all the time she knew her was that she was feeble-binded—what the

Hawaiians call "ihepa." She never at any time heard Eliza carry on a sensible or rational conversation.

Mrs. Hilda Chillingworth, testifying in regard to Eliza's pregnancy and her actions at that time, said: "Of course, we didn't realize what the trouble was. We used to make fun of her a great deal, never realizing, of course, that she was going to have a baby, but she would play around with us just the [220] same and went around as though there were nothing the matter with her. * * * I don't think she realized what was going to happen." Mrs. Chillingworth also testified that her earliest recollection of her was when she (Eliza) was about twelve or fourteen years of age. They lived on adjoining premises and while never intimate were friendly and played together a great deal. When asked to state what kind of girl she was and her condition, the witness said: "It is very hard to state, except our impression of her at the times was that she was just simple,—simple-minded." She imagined the Hawaiian word would be "lolo." "In playing games we would always take advantage of her. In playing hide we would make her seek and let her keep on looking, and we would play marbles with her and we used to take them away from her." When asked if Eliza would know how many marbles she would have at any time, the witness said: "I don't imagine so. It seems to me we would give her a few or whatever we had and she would be satisfied—I don't recollect."

Mrs. John Lopes knew Eliza when she was ten or eleven and again when she was seventeen or eighteen years old, and when asked if she remembered anything about her just before her baby was born, said: "Yes. * * * I do. I called to see Mrs. Holt and old lady Holt, and the girl in her condition I saw climbing over the—jumping from the chiffonier to the bed, and the day I was there I said, 'Don't do that in the condition you are in' and she only laughed at me and jumped up on the chiffonier and I said 'In the condition you are in you are not supposed to do that' and she only laughed at me."

Mrs. Marie Sea, one of the adoptive parents of Eliza's child, testified that Eliza had come to her house on Piikoi street about six weeks after her baby was born and that she thereafter [221] lived with her for six or seven months. Speaking of the time when the baby was adopted the witness said that she and Mr. Sea, and Mr. Holt and Eliza went before the court and the judge told Eliza "that she was giving her baby to me; that it wasn't hers any more;" that Eliza did not read over the paper which she finally signed. The witness had never at any time heard her read anything and had never seen her reading anything; also had never seen Eliza write anything aside from her name. When asked whether she took care of the child Mrs. Sea said: "She could not care for the child unless someone told her what to do. She did not know when to feed it, when the child needed feeding; how

to change it. I looked after that." When asked about Eliza as to her dress the witness said: "Well, if you had let her alone, she would not care to change or clean herself. She was very helpless. * * * Sometimes she would have her clothes inside out and the buttons inside. She would wear them that way unless I noticed it. * * * She was an imbecile to my way of thinking,—lolo."

At the trial of the rape case already referred to, Eliza was brought forward as the prosecuting witness. At that time she was about seventeen years of age. Her answers to the questions propounded to her give a clear picture of her mentality. Most of the questions were leading and were answered "yes" or "no." She seemed to have a fairly good knowledge of the streets in the neighborhood where she lived and the location of buildings. When questions were asked her which could not be answered "yes" or "no," her replies were often quite confused and sometimes unintelligible. She seemed unable to tell with any sort of definiteness just what the accused did to her. From her replies to many leading questions, in which the answer was [222] palpably suggested, an inference of sexual intercourse might be drawn, but nothing more. When asked why she did it or let him do it she replied, "I don't know." On cross-examination on simple matters her answers often were "I don't *no*" or "I don't remember." At first she did not know whether it was right or wrong to have sexual relations with a man before marriage. Later she said

it was wrong. She did not know why she was in court or who was the father of her child. In her testimony she accused two different men. After adjournment of court to the next day she was again called to the witness stand and materially changed her story. At the conclusion of her examination she was cross-examined as to her ability in simple arithmetic. When asked how many seven apples and five apples would make, or how many fingers she would have with seven on one hand and five on the other, or how many two apples and two apples would be, or what five times four would be, she did not answer but shook her head, indicating that she did not know.

Eliza's testimony is comprised within seventy-nine typewritten pages. It would be a wearisome and useless task to review it in detail. Suffice it to say it clearly reflects a very rudimentary and undeveloped mind.

Many witnesses other than those already referred to testified to their acquaintance with and their observations of Eliza during and prior to this period. While there is not entire unanimity of opinion among these witnesses concerning her mentality during the period we are now considering, a great majority of them regarded her as either "simple-minded," "ihepa," "lolo," or "pupule." The opinions of these witnesses were predicated upon her acts and behavior at various times which are inconsistent with a normal mind, such acts and [222] behavior being inability to carry on a "sensible"

or "rational" conversation; associating with "small children;" inability to do simple domestic work like "cooking," "making beds" and "sewing;" inability to take proper care of herself in matters of "dress" and "personal cleanliness" without direction; inability to "read" or "write" except to sign her own name; inability to "count" except to a limited degree; inability to "recite the alphabet" beyond the first few letters; often "grinning" and "running away" when spoken to, and yielding to the calls of nature in broad daylight on public streets in the presence of others.

"Ihepa," "lolo" and "pupule" are Hawaiian words in common use in this Territory and are descriptive of a person having a diseased or insane mind or of one having an undeveloped mind or of one who is in a condition of imbecility or idiocy. They all, however, indicate a state of mental incompetency arising from one cause or another.

Among the witnesses who considered Eliza normal during this period are Mrs. Ellen K. Lorenzen, a probation officer, Mrs. Eliza Yates McKenzie and Lorrin Andrews, an attorney at law.

Mrs. Lorenzen testified that as a probation officer she had worked with feeble-minded children and had observed how they acted. She first knew Eliza in about the year 1903 and saw her from time to time thereafter around Honolulu. She had come in contact with her in the home of her sister, Mrs. John Holt. When asked her opinion of her during the time she knew her, the witness said: "She al-

ways impressed me as being a very timid child." And when asked whether in her opinion Eliza was either "feeble-minded," "ihepa," "loló" or "pupule," Mrs. Lorenzen [224] said: "She" (referring to Eliza) "seemed to understand my sister, and when she would talk to her she would answer, and she was neat and clean." On cross-examination the witness was asked if she had not stated to Mr. Hite (one of the attorneys representing the petitioner), in the presence of John Holt, that she had always considered Eliza to be "lolo." Her answer to this question was: "No, I don't remember that." Holt, who testified in rebuttal, stated that he remembered a conversation during which Mr. Hite and Mrs. Lorenzen were present and that Mrs. Lorenzen said: "You, Johnny, know as well as I do that Eliza Holt was lolo. They called her ihepa and feeble-minded. Don't you think so?"

Mrs. Eliza Yates McKenzie, seventy-two years of age, who testified from her sick bed, stated that she used to visit, for three or four weeks at a time, in the Kentwell home at Waikiki, while Eliza was staying there; that she considered her perfectly sane, "there was nothing wrong with the girl. She was nurse girl, the woman that cleaned the house; that sewed the clothes, and I never saw anything out of the way with her. * * * I used to sit on the veranda and talk with her nearly all morning, sometimes, and she seemed to me perfectly rational." The witness did not know whether Eliza could read —that she was kept too busy to have an opportunity

to read, but she could "sing Hawaiian lore, Hawaiian songs * * * 'Like No A Like.' * * * She had a sweet voice." She stated that Eliza used to cook and serve the meals; take care of the children when the Kentwells went out; go swimming from the Cassidy pier. She did not know that she had given birth to a child; did not know anything about her marriage to Albert Christian. The witness remembered Mrs. Kentwell's having whipped or beaten her because she (Eliza) [225] refused to marry George Kentwell.

Dr. James R. Judd, who was called by the petitioner in rebuttal, testified that he had for many years been the physician and attendant upon Mrs. Eliza Yates McKenzie. When asked for his opinion as to her mental state, Dr. Judd said: "She is 72 years old and has had a great deal of illness, and at the present time she is confined in bed, and has been in bed for several months with a broken hip. It is common with old people. She has a good memory for past events at times, a very active memory. Of recent events her memory is not as good. That is a matter which is common with old people. I have never made any special observations as to her memory. I am not a mental expert. I could not give any scientific summary of her mental condition unless things were checked up. For instance, she might repeat a thing accurately and the next time subsequently alter it in some way, but considering her age and her illnesses I should say that she has a fairly good memory, at times confused, uncertain, and unreliable."

Lorrin Andrews, who is a member of the bar of this court, having been at one time attorney general of the Territory and who for the past few years has resided in Los Angeles, testified that during his residence in Honolulu he knew all of the members of the Holt family, including Eliza, whom he knew as a girl; that he was a frequent visitor at the Holt home and saw her on a number of occasions; that after she had given birth to an illegitimate child and had charged a white man named Hall with having raped her and when Hall was about to be tried on the charge of rape, Lawrence Kentwell called on him and told him, that his brother, George Kentwell, was about to be mixed up in the matter, and that as a result of this conference he [226] interviewed Eliza. Speaking of this interview the witness said: "* * * When I told her I was representing George Kentwell, she talked very freely and she said to me that she had testified before the grand jury, I believe under the advice of Annie Kentwell. She said Annie Kentwell, as I remember it, was a daughter of Owen Holt and, I guess, her cousin,—yes, the daughter of Owen Holt, and her cousin." In answer to the question as to what she said to him during this interview the witness stated that Eliza said in substance that "at the instance or advice of Annie Kentwell she had said that Hall was the only man who had ever been intimate with her and was the father of her child; that she had fixed the alleged rape at an unfinished house that Hall was building; that she had got

mixed up in her dates; that it turned out that the house had been finished more than a year before her child was born and she was very much worried over it as to what would happen to her when she got in court and they confronted her with these witnesses. She asked me what she should say, and I told her, 'I am not your lawyer; I am not going to give you any advice. The only think I can say is, if you come into court you had better tell the truth. That is the safest way to do.' And she went on—portions of the conversation I remember—she went on whether they would put her in jail * * * for having lied, and she began, bringing up different things that she wanted advice on, and Annie Kentwell said, 'Well, Eliza, play lolo, play lolo; that is all you have got to do,' and when that came I thought it was about time for me to retire from the scene, and I retired. * * * I don't remember ever having talked with Eliza Holt after that date." In answer to a question as to how the girl impressed him the witness said: "There is no question. She was perfectly rational, if that [227] is the test;" that he noticed no impediment in her speech but that she spoke very slowly; that so far as speech was concerned she was "normal for her class and age." The witness also testified that he heard Eliza testify in the Hall case and that she was entirely different; that by the comparison he would make, she was at the trial either "very much frightened or acting."

As we have already seen, Eliza went in 1906, with her father and the Kentwells, to the mainland of the United States, remaining there until 1909 when they removed to Oxford, England. This constitutes the sixth period of Eliza's life. At the beginning of this period she lived with her father and the Kentwells, first at Cambridge, Massachusetts, for a few months, and then at Elizabeth, New Jersey. On June 13, 1907, Eliza appeared before Edward L. Mack, commissioner of deeds of New Jersey, and acknowledged that she had signed, sealed and delivered her written confirmation of a lease made by John D. Holt, Jr., and others on January 1, 1901, to Annie Holt Kentwell. On June 14, 1907, she appeared before E. L. Bernard, notary public, New York County, and acknowledged the execution of an option to May K. Brown for the purchase of her contingent interest in lands at Makaha. On October 26, 1907, she again appeared before Edward L. Mack, notary public of New Jersey, and acknowledged the execution of a quitclaim deed to certain lands situate at Kaaawa, Makua, in the County of Oahu, and Territory of Hawaii, to L. L. McCandless. On January 1, 1909, she gave birth to another illegitimate child in the city of New York.

Elizabeth Martz, a resident of Elizabeth, New Jersey, for about thirty years, testified that she knew Eliza between "1906 or 1907, or 1908" and that she lived next door to her for "about three or four years or more;" that during that period they [228] had talked to each other "about once a

week,—maybe more;" that Eliza was "a short and dark lady, appeared to be a Jap. * * * She looked just like a Jap, that is all I can say." Their conversations were "just general things;" she was "all right. She seemed to be—she was sane. She was rational." The witness saw no indication of temper on her part, "she was all right in every way;" she (Eliza) was about twenty years old, "I suppose," at that time. She "guessed" Mrs. Kentwell was also a "Jap,"—all the members of the family living there appeared to be Japanese. When asked if she was on intimate terms with this Japanese family next door—whether she called on them and visited with them a great deal, the witness said: "Well, no, just occasionally, that we had milk for sale, and when they were short they would come in and get the milk and so, and then out they would go." When asked if she and the members of this family called on each other particularly, she said: "No, just as a neighbor, we just spoke as neighbors would do, you know—a few words and that." She never visited the home, or had meals with them or anything like that. She knew nothing about Eliza's habits about the house. She knew nothing about her ability to take care of her self. She never saw her write anything; she never saw her read anything. She never saw her handle money. She never had occasion to see whether she could add or subtract. Eliza never had any money. She did not know that Eliza had an illegitimate child while she was living there. When asked if during the time she lived

next to her she ever noticed that Eliza was pregnant she said: "Well, you see, we were busy, and I hadn't much chance to gaze around, and as I say, we were out with the milk wagon, we would come in in the afternoon, and then we were too busy—we didn't visit with no neighbors or [229] anything. I didn't notice anything, no." She did not see a great deal of Eliza—"just occasionally—just as I say, maybe probably once a week and maybe more, and she would come in maybe once or so to get milk."

Edward L. Mack testified that on June 13, 1907, "someone who was introduced to me as Eliza R. P. Christian" appeared before him and personally executed the confirmation of the lease to Annie Kentwell just referred to and that he took her acknowledgment in regular form as commissioner of deeds; that he explained to her the contents and purpose of the instrument and asked her if she executed it freely and voluntarily and that she answered in the affirmative. When asked if he could recall anything with respect to Eliza's appearance and conduct at the time he said: "I have not a very clear mental picture of her, except that as I recollect it she was a woman of approximately my own age and rather small and not attractive. There was nothing in her appearance or manner that impressed her upon me very strongly." The witness could not remember anything that she did or said that would lead him to suspect that she was not of sound mind. The witness was also shown a certified copy of the deed from John D. Holt and others to

L. L. McCandless, dated October 26, 1907, and said that the original of this instrument was executed in his presence as a duly authorized notary public for Union County, New Jersey, and that John D. Holt and Eliza Holt Christian signed it in his presence; that he explained to Eliza the contents and purpose of the instrument and asked her if she executed it "for the uses and purposes therein expressed, freely and voluntarily and without any constraint, compulsion or fear on the part of or from her said husband," and that she answered in the affirmative. When asked if he had [230] any other conversation with Mrs. Christian and Mr. Holt on that occasion he said: "My recollection is that following the execution of that instrument I asked them if their former home was in Hawaii. We talked for two or three minutes about the Island." When asked if Eliza's acts or conversations were those of a rational or irrational mind, he said: "All I can say is that there was nothing in her appearance or in anything she did or said which led me to suspect that she was not of sound mind." From the two meetings he had with Eliza he said: "I think she was normal. I would rather answer that by saying that I do not remember anything she did that would lead me to think she was not normal. * * * In other words, I am trying to convey now that there was no reason for me to scrutinize Mrs. Christian with the idea of seeing whether she was sane or not. She did not give the slightest evidence of not being perfectly all right."

He was testifying to facts which occurred twenty-one years before, when he was twenty-six years old. It was the first time he had ever been called upon to take an acknowledgment to a deed covering land lying outside of the United States and for that reason alone he could explain why he could remember, when he was taking so many acknowledgments. He had never seen Mrs. Christian before the 13th day of June, 1907, and the 26th day of October, 1907, nor had he ever seen her since. In taking her first acknowledgment he did what he usually did, that is, asked her questions in the usual form and got an indication of affirmance and that her part in the conversation was to indicate her affirmance. Speaking of the conversation regarding Hawaii, that occurred on the taking of the second acknowledgment, he said: "My recollection is that the conversation was almost entirely between Mr. Holt and myself." [231]

Everett L. Bernard testified that he was an attorney living at New Rochelle, Westchester County, New York, and that he had been a notary public authorized to take acknowledgments in the city, county and State of New York and that he was such notary public on June 14, 1907. He was shown a certified copy of an option of Eliza R. P. Christian to May K. Brown, purporting to be dated the 14th day of June, 1907, and was asked whether the original of that instrument was executed in his presence, to which he replied: "I believe it was, yes, to the best of my knowledge;" it was signed by Eliza

R. P. Christian on the date of the acknowledgment in New York County. "After she signed it, I asked her if she acknowledged it, and I followed the wording of the acknowledgment which was a little bit unusual—whether she acknowledged it freely and voluntarily for the uses and purposes therein set forth" and "she said 'yes' or replied in the affirmative. I think she said 'yes;'" that no one prompted her to give that answer. The witness was also shown a certified copy of a deed by Annie H. Kentwell and husband, et al, to May K. Brown, purporting to be dated June 14, 1907, and was asked whether or not the original of that instrument was executed in his presence to which he replied: "Yes, * * * by Annie Holt Kentwell and L. K. Kentwell, and Eliza R. P. Christian * * * in New York County" on the date of the acknowledgment; that he asked Mrs. Christian if she acknowledged the execution of this instrument and "my memory is she said 'yes'" and when asked if anyone prompted her in making her signature he said "no." The witness had seen Mrs. Kentwell and Eliza on one other occasion prior to the signing of the deeds. When asked to state what conversation was had between any of the persons present upon the occasion of his first meeting with [232] Mrs. Christian the witness said: "I do not remember the exact conversation, other than a discussion of the transaction. * * * I recall I addressed a remark to the group inquiring of them the reason for the reservation of a parcel which was reserved in the option,

and one of the three replied that it had a patch of some fruit or vegetable they desired to retain; and the other two nodded an assent to that; it was unanimous. That is the only particular conversation I recall." Speaking of the time when the acknowledgments were taken, the witness said: "My memory groups the two women in my mind. Neither of them stands out distinctly from the other. They were both alike and at the time I had been told, I think, that they were related. * * * The demeanor of both was ladylike and pleasant and normal in every way." When asked particularly about the appearance or conduct of Mrs. Christian on the date of his first meeting with her, the witness said: "I am not positive that my meeting on June 14th was not my only meeting with her. If I met her at the first time I was at Mr. Cook's office, there was nothing at the meeting which would distinguish it in my memory from the second meeting, so that I will have to answer that question as though the June 14th meeting were the only meeting I had present in my mind. * * * Her appearance was usual and ladylike, attractive and not in any respect different from that of her companion. * * * She was dressed as usual and her deportment was usual." When asked if there was anything in the acts or conversation or conduct of Mrs. Christian which indicated her soundness or unsoundness of mind, the witness said: "I had no thought about the matter; it never occurred to me."

Eliza's child, which was born in New York on January [233] 1, 1909, was delivered on the platform

of an elevated railroad and Eliza was hurried to the Manhattan maternity hospital where she was attended by Dr. Masson for about three weeks. Dr. Masson, who for some years has been a surgeon at the Mayo clinic at Rochester, Minnesota, testified that he was the resident physician at the Manhattan maternity hospital when Eliza was brought there. He remembers when she was brought to the hospital and that she was placed in a private room and that he saw her at least once a day and sometimes oftener while she remained in the hospital. During these visits he talked to her but always on the subject of her condition. When asked if she spoke like an intelligent person, he said: "I always got what I considered satisfactory answers to questions asked her and looked upon her as a rather diffident foreigner who did not speak a great deal of English. * * * I am quite sure I remember that she spoke with the accent of a foreigner." "She was a very obedient patient and gave no trouble to the hospital authorities, as I observed her." When asked if he observed anything irrational as to demeanor, he said: "No. Nothing was noticed by any of the hospital staff. * * * I considered her quite normal." When asked if she ever did anything in his presence that indicated that she was mentally deficient he said, "no." When asked if her demeanor impressed him as being the demeanor or acts of a mentally incompetent person, he said, "no." He also said he considered her normal mentally.

The witness was shown certain documents which he identified as the records and charts of the hospital kept by him or under his direction and supervision, and from these records and charts reaffirmed his opinion as to Eliza's mental condition. [234] On cross-examination he testified that the greater part of his training and experience had been in surgery and gynecology, except for a period of about three years, when he was engaged in a private capacity in the general practice of his profession. He never made an examination of Eliza as to the degree of her mentality. He never used any tests recognized by alienists to determine the degree of her mentality. He was unfamiliar with these tests. He made no observations as to whether she could add two and two or whether she would be able to subtract or read or write or memorize or could appreciate the value of money or of property. He made no observations as to her standards of morality.

In 1909 Eliza Christian went, again with her father and Annie and Lawrence Kentwell, to England, where she has ever since resided. This constitutes the latest period of her life. During this period she has lived (except for perhaps four years when she lived in London) at the home of the Kentwells in Oxford. There is little or no evidence concerning her while she was living in London. There is, however, a great deal of evidence concerning her during her residence with the Kentwells at Oxford. This evidence covers a term of

more than twenty-five years and was given in the form of depositions, nearly all of which were taken at Oxford by a commissioner, the witnesses being examined and cross-examined orally by counsel for the respective parties. It is so voluminous that it would extend this opinion beyond reasonable or necessary length to review it in detail. We shall, however, set it out sufficiently to give an adequate understanding of its general tendencies and its probative effect.

It was during the period we are now considering that [235] Eliza signed the deed to James L. Holt, which is the subject of the present suit, this deed, as we have already seen, being dated May 2, 1910. On May 21, 1912, she also signed a deed which purported to convey to John M. Dowsett certain lands at Makaha. On January 11, 1923, she signed a power of attorney to Henry Smith, of Honolulu, and on March 16 of the same year signed another power of attorney to Henry Smith. Two letters were received in evidence by the circuit judge and are a part of the record, the originals of which the Waialua company claims were written by Eliza during the period of her life now under consideration. During this period she gave birth to another illegitimate child, which is still living.

Catherine Hambridge testified that her occupation was that of housekeeper; that she had followed that occupation for at least twenty-five years; that she was in Mrs. Kentwell's service at Oxford on

July 8, 1911, and lived in the Kentwell house for about eight months and since that time had visited the Kentwells continually and that during her acquaintance with the Kentwell family she had come in frequent contact with Eliza and knew her well; that Eliza was not able to take care of herself in the ordinary way—had to be told things that should have been told a child; had to be told more often than not to have a bath and when to change her clothes and linen; that she wrote and read very badly, frequently went into fits of temper if anybody offended her and if she was much upset she would go upstairs and shut herself in a room and not come down to meals. This happened fairly frequently—not very often. The witness believed that Eliza was fond of the Kentwell children, but "very often got exceedingly angry and I have known her to give the little boy a knock." The cause [236] of these fits of anger with the children was "because she wanted them to do something which they objected to." The witness never knew Eliza to carry on a rational conversation with anyone. "She could not reason out anything with you. * * * She would go out and you did not know when she was coming back. One day she went out, I believe it was fair time, and she came back drenched. She went out several times and when she came home she was very wet and went straight to her room. She would not see Mrs. Kentwell at all." She always had to be told to change her bed clothes. The witness was present and was housekeeper at the time Eliza's

father died. She showed "no actual grief that I noticed. There were no tears shed when her father died. That I do know. We had a nurse and she did not help nurse him at all." She "never went near." She "did go out alone sometimes. She went to the pictures but she was always told what time to come back." She would always come back "fairly right." All the time the witness had known Eliza her condition had been the same—"more like a child than anything else. * * * She rarely carried on a conversation. She did not seem to have the power to." When asked as to her susceptibility to influence or capability of resisting it, the witness said: "If she liked a person very much she might do anything. I never quarreled with her but the servants quarreled with her. I treated her as a child from the time I went there. I saw that she was not really all there and I tried to be tactful with her so that I never quarreled with her and she would fairly do the things I asked her. * * * You might get her to do things by coaxing her. * * * I use to say: 'Do so and so, there's a good girl,' whereas if I ordered her she might have refused." When asked if she noticed [237] any other trait the witness said: "Of course I did notice. I think I was sitting at table one day she played the piano and there was no time or anything in it. She said: 'When I was at school I took several first prizes.' It meant that the woman was not equal to doing what a child of six ought to have done. That was very like a child's doing." When asked if she could recall anything else indicating Eliza's mental condition, the witness said:

"The whole thing of course was childish. I treated her as such and spoke to her as such. If I racked my brain I might find a lot of odd things which showed how simple she was. She always wanted to be very much alone. If anyone came in she never wanted to come down; she always wanted to go upstairs to her room. * * * Some times she would cut paper and make some paper flowers but then she would sit upstairs doing nothing. She could not read much."

Lily Jamieson testified that she had worked with with Mrs. Kentwell for four or five years, beginning sometime in 1909; that after this term of service expired she went away and later returned and remained until a month or two before her testimony was taken; that Eliza was living with the Kentwells all the time the witness was there. When asked if she noticed any indication of temper on her part she said: "Yes, she got into a temper, she came into my room between five and six in the morning and thumped me on the head and quite dazed me. I had to call Mrs. Kentwell to my assistance." This "happened only recently." The cause of Eliza's striking her was that "the kitchen door was locked, and she seems to think it was through me it was locked. She thought I was the cause of it being locked and so she thought she would have her revenge on me." When asked about Eliza's cleanliness she said: "Well, [238] she would never change her things nor never wash, not when she was told." When asked what she would do with her spare

time the witness said: "She generally used to go into her own room. She would sit up there; she would read or cut things out of the newspapers." In explanation of what she meant by "reading" the witness said: "She would look at papers then, but she cannot read sentences properly. * * * I have heard her try. She has done that with me." She would cut out "pictures and advertisements, chiefly advertisements. * * * Just anyhow she would cut them. * * * Just keep them, collect them together, keep them." When asked about her conduct towards the tradesmen that came to the house, the witness said: "She was very fond of going to the door and talking with them, and giving silly, trifling things to them" like "flowers, pencils or anything like that she would give." If a little money was given to her "she would often give it away * * * to people in the street or if not, she would spend it on silly things. Things that were of no value at all, childish." She could not handle money "because she could not give correct change and she could not count money. * * * That I know from my own experience." When asked if she had ever seen Eliza try to write the witness said: "No, she cannot write at all. She cannot make her letters nor spell properly. You would have to tell her how to spell, she cannot spell. * * * I have seen that. She has always had to ask someone to spell words for her. * * * Once when I was with her" (on the street) "she turned round and swore at me simply because I wanted her to come home. She wanted to stay

out and she turned round in the street and swore at me. * * * She has gone off and stayed out quite late at night, and Mrs. Kentwell or someone [239] has had to go and search for her. * * * She has often come to our house and has acted very silly. Dances about very silly you know in the house. * * * I have always had to bring her home. She could never go home by herself." During all the time she witness knew Eliza "she has never improved, has never got any better. She has always got into these terrible tempers."

Mrs. Frederica Jamieson, the mother of Lily Jamieson, who saw Eliza at her (the witness's) home on four or five different occasions, testified to several instances of peculiar conduct on her part.

Ethel Margaret Richardson, a trained nurse, testified that she had known Eliza "one way and another" for about twenty-two years; that she was a frequent visitor and guest at the Kentwell home and Mrs. Kentwell and Eliza had been frequent guests at her home. When asked what she knew of Eliza's ability to read, she said: "Well, I should say not. Nothing over little tiny words, because I showed her myself a letter when I mislaid my spectacles and asked her if she could read it. It was perfectly legible, but all she made out was 'clock;' nothing else; she said she could not read the rest." Speaking of her ability to take care of herself the witness said: "I should think she would be like a stray sheep if she was let loose. * * * One

does not like to be too personal, but I should not say she was by any means a very cleanly person. Certainly she did not look much brushed up. * * * I am quite sure she could not" make plans and arrangements for herself. Speaking of her character of speech the witness said: "She talks extremely indistinctly, and it is very difficult for me to make out what she is saying until the sentence comes to an end. She talks as if she had a sort of impediment in her mouth. * * * She does not seem to have any interest in anything except in what you might call immediate creature comforts. She [240] will talk about meal time being near at hand; she will talk about the pictures, but I don't think she could tell you what the pictures are about. * * * From my observation she would just hang about, gaze out of the window probably and twist her apron between her thumbs. * * * She is certainly very moody. She has a way of going into a sulk for no apparent reason and she stares in an uncanny way, and she looks very loury, very loury, as if she was nursing a grievance." When asked if she had ever been any different from the condition described, the witness said, "no." On cross-examination the witness said she was a great friend of Mrs. Kentwell's.

Mrs. Eliza Joliffe, who was residing in London but who had formerly lived in Oxford, testified that she was a frequent visitor at the Kentwell home and "saw quite a fair amount" of Eliza; she used to come "to my children's parties. She never

came to the grown-up parties." When asked whether during the time she had known Eliza she had ever known her to carry on a really sensible, rational conversation with anybody the witness said: "Good gracious, no! I should think it was quite impossible. She would just say 'Yes' and 'No,' or 'it is a nice day,' or 'How are you,' beyond that, unless you asked her questions, she would not volunteer any statement at all." When asked whether she had ever known Eliza to participate in any conversation, or what part she took in conversations she said: "Well, vulgarly speaking, a back seat, always, I should say. She would sit and look and perhaps smile. I really do not remember any occasion when she would volunteer any statement."

Mary Clapton, a servant in the Kentwell home, had known Eliza during the five years she had worked there. When [241] asked about her ability to take care of herself in the house the witness said: "She cannot take care of herself and she wears clothes from one week-end to another unless you have the clothes in your hands and put them on her. Even to her bath, you have to tell her to have a bath once a week otherwise she would not do it. * * * She can read a little but she cannot understand what she is reading. * * * I have seen her try, but she cannot make out the words. * * * I have only seen her write her own name, that is all she can write." When asked what Eliza did with her spare time the witness said: 'She generally

gets hold of a newspaper and cuts out rubbish * * * cats and dogs and pictures like that. * * * She cuts them out all crooked. * * * She generally puts them in a drawer in the kitchen. * * * She has never used the telephone. * * * She has several times been up in her room and would not come down and has remained there all day long. I have been up and asked her to come down to her meals, and she has slammed the door in my face. * * * When it has been a bitter cold day she has been in her room with the window wide open. I have been up and asked her to shut it and she has slammed the door in my face, shivering with cold. * * * She cannot cook." The witness also recited instances of temper on Eliza's part. When asked about her treatment of her clothes the witness said: "I have seen her" tear them up—"good clothes they were. She has torn them up in front of me."

Arthur Lambert, a plasterer, testified that about 1913 Eliza often came to his house and stayed all day and while she was there she did nothing but sit and lie about; that her talk was "silly kind of talk. I cannot tell you exactly what she said, but childish talk." One time she stayed at the [242] witness's house a fortnight but never slept in the house but would go away at night and return in the morning. "I told my wife to see Mrs. Kentwell and tell her we could not put up with her any longer. She went to see Mrs. Kentwell and Mr. Kentwell came and fetched her away." The witness said: "During the time she was staying at our

house she was very dirty in her ways;" when she would come back in the morning she would be "as though she had been walking about all night by the appearance of her;" her clothes were "very dirty." When asked: "And at the end of the fortnight had she a change of clothes?" the witness said: "Not to my knowledge." The witness's residence was in Oxford and about "a mile and a half" from the Kentwell home.

Mrs. Mollie Alatau Wilder testified that she had known Eliza since 1920, while she was living at Oxford with her son who was attending the university, and since then had seen her from time to time. When asked to state what she had observed in the conduct or appearance of Eliza indicative of her mental condition the witness said: "There is no question in my mind that Eliza Holt Christian had the mind of a child. I spoke of that to Mrs. Kentwell at the time." When asked if she had ever endeavored to converse or speak with her and what had been the result of such atetmpt, the witness said: "Yes. I have. * * * I would consider that her answers were very simple. I could not carry on any conversation with Eliza. I tried to." She had seen her at the Kentwell home in Oxford off and on for about three years. When asked if she had ever heard her carry on a rational conversation with anybody the witness said: "I never have. I have never heard her answer more than a word or two, at any rate, if any questions were [243] put to her. She did not seem to be able to converse. * * * I looked upon her simply

as a child sitting there. * * * I simply felt that Eliza when I was there was a child in the place. She was just there and that is all. You did not pay any attention to her, she was just there." The witness never saw Eliza endeavor to read or write.

Dr. Thomas Saxty Good, a medical practitioner and medical superintendent of the Oxford and County Mental Hospital, testified that he was qualified in 1893 and had been thirty-three years at Littlemore, during twenty years of which time he had been superintendent. He also testified that he was Master of Arts at the University of Oxford, a member of the Royal College of Surgeons and licentiate of the Royal College of Physicians. He further testified: "I have done my work necessarily at the mental hospital. During the war I was consulting neurologist to the 3rd Southern General Hospital. Then for 4 years I had a neurological hospital, first in the army, in which I still hold the rank of Lieutenant-Colonel; then for 2 years under the ministry of pensions. I am on the staff of the Radcliffe infirmary as neurologist and I also lecture on my special subject to the faculty of medicine. * * * The title of my lecture is 'Neurological methods', in addition to that I am expert and referee for the feeble-minded for the city of Oxford and also for Oxford county." He had on four different occasions examined Eliza Holt Christian as to her mental condition. The first time was in 1915, the second on May 31, 1925, the third on November 30 or December 1, 1926, and the last time on Octo-

ber 25, 1928, a few days before his testimony was given. When asked his opinion as to her mental condition he said: "One of what, under [244] English law, is a feeble-minded person. * * * I put her at about equivalent to a person of 4 or 5. It is difficult to be absolutely exact, but she has the mentality of a child of about 4 or 5." The witness then explained the system he used in reaching his conclusion. Speaking in detail of the result of his examinations the witness said: "She cannot compare simple objects. Might I give an instance? For instance, you ask, 'I want you to tell me the difference between an apple and a banana.' She told correctly an apple was round and a banana long. You give one mark for that. I said, 'Give another difference.' She said bananas grew on very high trees and apples grew on very low trees. The next question I asked her was, 'What is the difference between wood and glass?' She did not attempt to answer; she was completely confused. She could not give any difference between those, nor could she between paper and cloth. Therefore one said that her powers of comparison were very much below the normal. Then there is the definition which is used to see whether people know things in terms of use and in terms superior to use. You ask, 'What is a chair?' She said, 'to sit on,' but when you pressed her she could give no further definition of a chair or further comparisons with other objects. On asking her, "What is a horse?' she simply gave

a description of a horse in a carriage, but she could not tell you what good or use the horse was in that carriage. I gave her quite a simple addition sum and she could not, as far as I could ascertain, do any addition at all. A question I did ask her was a simple subtraction in terms of money; she did not seem to know how many shillings there were in a £, and she could not even tell me if I took three away how many were left. I tested her for her power of reading; that test does [245] test because there are certain words jumbled up which have to be put together to make a sentence, and she could not read some of the words at all. She could read some of the small, little words, but a word of perhaps two syllables very often one had to spell it out and then she did not seem to know it. Then again, her vocabulary, which is a well known test in which you say, 'Now I am going to give you three minutes, I want you to say as many words as you can,' a word like dog, cat, piano. She produced about twenty words simply the names of nouns which is very much below what is considered even normal. It has been known for a normal child to produce something up to two hundred in that time." The witness also spoke precisely of other tests to which he had subjected Eliza, all of which in his opinion disclosed a puerile condition of mind.

Dr. Amyas Theodore Waterhouse, a practicing physician, who had also had a wide experience in the examination of mental defectives, testified that he had examined Eliza on two occasions, first in

1926, and again in October 1928. Regarding her mental state he said: "I came to the conclusion she was a feeble-minded person and that her mental age was approximately six years." The witness then explained the method used by him in making examinations. When asked whether he considered the condition in which he found Eliza to be of recent occurrence or a continuing one he said: "I should say it has been a continuing condition. * * * I should say it has most likely been life-long."

Dr. Edward Morton, also a practicing physician, testified that he had practiced in England since 1885. When asked about his experience in the treatment of persons mentally [246] defective he said: "I took a special course out in Edinburgh at the Morning Side Asylum. I repeatedly acted as locum tenens at the Warneford Mental Hospital in Oxford. I was medical superintendent at a special school for mentally deficient children at Wolverhampton. * * * For the past ten or twelve years I was co-opted as a member on the statutory committee for the city of Oxford for the treatment of mental deficients and I am chairman of the Voluntary Association for Mental Welfare." During his experience several cases involving mental defectives had come under his observation. He first became acquainted with Eliza and Mrs. Kentwell about 1909. He met them as a medical attendant. He was medical attendant for the family for about sixteen or seventeen years. He treated Eliza professionally and in a general way observed her men-

tal condition. He had seen her quite recently, at Mrs. Kentwell's house in Woodstock Road. When asked his opinion as to her mental condition he said: "Well, she is obviously of feeble intellect and I should put her about the level of a child of about five or six." When asked whether in his opinion this condition had continued since he had known her the witness said: "Well, she appeared to me much the same as she was when I first knew her. * * * I should say it is a continuing condition."

There were other witnesses who gave very much the same description of Eliza's mentality during this period as did those whose testimony we have mentioned. Still other witnesses, however, described her mentality quite differently.

For instance, Dr. Charles James Douglas, a practicing physician and a licentiate of the Royal College of Physicians in Ireland and also of the Royal College of Surgeons in Ireland and a member of the British Medical Society, testified [247] that he had practiced his profession for forty-eight or forty-nine years and from time to time had advised upon cases of mental abnormality,—both feeble-mindedness and insanity; that on February 17, and again on February 19, 1923, he went to 159 Woodstock Road, Oxford (which was the Kentwell residence); that on the first visit Mrs. Kentwell was not in and he went again the second time, when he saw Mrs. Kentwell and explained to her the object of his visit. He then saw Eliza Holt Christian,

with whom he had a conversation. "At first I asked a few questions to gain her confidence, to make her at ease with me; reference to suffering from an attack of influenza. Then I asked questions in relation, and she did not show any resentment or disinclination to answer questions, and I asked her if she understood what the reason of my coming was. I wanted to find out if she thoroughly understood the position with regard to signing a document to enable Mrs. Kentwell to receive her money; she said 'yes.' She thoroughly understood that and had every confidence in Mrs. Kentwell, and even if she were advised to the contrary she would take Mrs. Kentwell's advice in preference to anybody else's, that she had absolute confidence in her affection and love for her and good will towards her. * * * That was the first part. I can't remember, it would be about eight or ten minutes. I asked her other questions which I can't remember now to satisfy myself as to her general outlook on life, that it was fairly normal. I got no answer that did not satisfy me. As to the particular questions I can't remember." When asked whether she took a part in the conversation the witness said: "Well, she was in, in that the conversation would be more or less a question and an answer, but she was not—I could not tell you really what [248] she would enlarge upon, but she certainly showed no hesitation in giving me an answer to any question that I asked. * * * It" (his question) "was appreciated and understood and answered." She gave "an in-

telligent answer." Mrs. Kentwell invited the witness to stay for a cup of tea and he accepted. Speaking of the conversation during the tea the witness said: "We had a general conversation, and during that time I observed as keenly as I could the attitude of Mrs. Christian and was confirmed in my previous impression that her attitude was quite normal. * * * She took a certain part, not a prominent part in the conversation, and I don't remember what the conversation was about. I think they told me something about their life abroad and talked about local events as far as I can remember. She struck me as a neurotic, a bad neurotic, and was suffering from the effects of an attack of influenza at the time." Eliza "told me she was married, had lived with Mrs. Kentwell for the last seventeen years. * * * She was married at seventeen years of age, lived with her husband for one year, who was very cruel and she separated. He is still alive; she went to live in New Jersey with Mrs. Kentwell; came to England in 1909. When a child she suffered from lapse of memory but now her memory is quite good." When asked whether she told him all this the witness said: "That I gathered during our conversation, although here I mention that while gathering this information from Mrs. Holt Christian I was struck by her minute attention to details and by her evident affection for Mrs. Kentwell and her children. * * * This is the sum total of my recollection, I incorporated immediately thereafter." (By incorporating it, the witness evi-

dently meant that he had incorporated the above conversation in a [249] letter which he had written to Mr. Garnett a few days after he saw Eliza, which letter is attached to his deposition as an exhibit.)

Henry Holmes, Esq., who has been a member of the bar of this court since 1892, testified that he first met Eliza Christian in the year of 1912 in Oxford, England, where she was residing with Mr. and Mrs. Kentwell; that "I went there to announce to Mrs. Christian that Mr. J. M. Dowsett, the assignee of an option that she have given in 1907, I think, which was to May K. Brown, the wife of Arthur Brown,—that Mr. Dowsett was prepared to exercise that option, which had been transferred to him by Captain Matson." The witness was shown a copy of the option and identified it. When asked if he knew the signature of Eliza R. P. Christian the witness said: "Well, I saw her sign her name to the conveyance by her to Mr. Dowsett, at the consulate in London, at the time that she carried out the provisions of that option by conveying the interest that she had in Makaha to Mr. Dowsett." When asked whom he saw when he called at the Kentwell home in Oxford, the witness said: "The door was opened to me by Mrs. Christian. I told her where I had come from and what my name was, and she invited me into the house. I went with her into a sittingroom and there I saw her father, Mr. John D. Holt, whom I had known in Honolulu. * * * I told them what the object of my visit was. * * * I said that I had come to ask Mrs. Christian

to carry out her agreement or option to transfer her share of Makaha to Mr. Dowsett. John D. Holt said, 'Kentwell is acting for us and you have got to tell Mr. Kentwell what it is you want.' * * * I stayed about ten minutes or quarter of an hour with [250] them, and we talked about Honolulu. I asked them how they liked living in Oxford and both of them answered. I remember John D. said 'I find it very cold,' but he thought the country was very beautiful, and she said that 'I think he doesn't like it because he misses his poi. * * * She" (Eliza) "said, 'Well, I think he doesn't like it very well because he misses his poi,' and the old man said, 'Yes, that's it; I would like to get back to Honolulu to have some more poi.' She said, when I asked her the same question, if she liked it, that she liked the cold; went out for one or two walks every day, usually with her father, and she liked what she called 'the life,' I mean the quiet, very decent life there is there in the university city of Oxford. * * * The conversation was fairly general and what was to be expected between a person arriving from Honolulu and these two Hawaiians." When asked if the conversation was with both John D. Holt and Mrs. Christian the witness said: "Yes, they were both there. One would talk and then the other." Speaking of her appearance at that time Mr. Holmes said: "She seemed to be in very good health, judging by the color of her skin; of course it's a cold country and if you get out much you will have pink cheeks. She seemed to be in good

health, I would say." The witness saw Eliza again at the Kentwell home within a week. Speaking of who were present at the second meeting the witness said: "Mr. and Mrs. Kentwell were there, and Mrs. Kentwell's children, and Mr. John D. Holt and Mrs. Christian. * * * My wife was with me. * * * We were invited to stay to tea, and tea was served in the garden, I might put it, at the back. Mrs. Kentwell said to Eliza, 'Will you sit with us?'—'us' meaning with Mr. and Mrs. Kentwell, my wife and myself. She says, 'No, I'll sit with the children.' [251] They had a table a short ways from the old folks' table, and she said, 'I'll sit with the children.' * * * There was a little general conversation. My wife would ask her" (Eliza) "a question, or I would, and usually get an answer." When asked if anything was said at that time with relation to the proposed sale to Mr. Dowsett the witness said: "Well, I had mentioned to Mr. Kentwell, of course, the purpose of my visit. He seemed to understand the case very well, because of the experience that he had had in the case of Waialua when Mr. Withington went across. It was not a novelty to him, or it was not unexpected that Mr. Dowsett or someone representing him might appear on the scene in connection with the option that Mrs. Christian had given. * * * Mr. Kentwell said, 'If I could escape the obligation to carry out that option * * * I wouldn't carry it out.'" When asked when he next saw Mrs. Christian the witness said: "Oh, I saw them more than once, on that visit to Oxford. They

came to the hotel to dinner the night after the tea we had had,—Mr. and Mrs. Kentwell and Mrs. Christian; John D. didn't want to go. We had them to one of the hotels in Oxford to dinner; they stopped quite late, about ten o'clock." There were present "Mr. and Mrs. Kentwell and Mrs. Christian and my wife and myself. * * * I suppose the dinner would take place about seven o'clock, half past six or seven, and they certainly were there until about ten. * * * We talked about all sorts of things,—with this exception, Mr. Kentwell said, 'You better acquire John D. Holt's, what you call, contingent interest, or buy his interest.'" When asked if there was any conversation with Eliza that evening the witness said: "She was a girl that would speak if she was spoken to. She is not a forward girl; shy, retiring, but never hesitated to answer any question which was [252] put to her, but never would start a conversation. * * * My wife talked to her." When asked when he next saw her the witness said: "My recollection is that—we were living at the hotel; my recollection is that we met them at lunch next day, at the hotel." There was a "general conversation there." When asked who joined in the conversation the witness said: "Well, Mrs. Kentwell talks very easily and rather fond of it, more so than her husband, but Mr. Kentwell talks, too, freely. Eliza would talk when she was spoken to but I don't think otherwise." The witness said: "I saw them next at the American consulate, in London." There were present

"Mr. and Mrs. Kentwell, Mr. John D. Holt, and Mrs. Christian and I were there." The name of the consul was "either Westacott or Westmacott, I am not sure which." When asked to state what took place at the consulate while Eliza was there the witness said: "I arrived at the consulate before they did. When they came in the consul, or vice-consul, said, 'Oh, you Honolulu people are here again,'—evidently referring to the fact that he had met them while the Waialua transfer was made. * * * He asked what the business was, and Mr. Kentwell said that they wanted him to take the acknowledgments to three deeds, I think he said just three deeds. * * * The first deed that was * * * produced was the conveyance by Eliza Christian to Mr. Dowsett of her share or interest in Makaha, according to the terms of the option." The witness was shown a document dated May 21, 1912, bearing the signature of Eliza R. P. H. Christian and identified it as the deed of which he was speaking. "The consul took the paper in his hand and looked over it and he said to her" (Eliza) "'You understand that this is a transfer by you of some property in Honolulu?' and she said 'Yes;' then he asked her if she acknowl- [253] edged that as her free act and deed,—the usual form. She said she did. Oh, I ought to mention that she signed the document there before him and he witnessed her signature, then took the acknowledgment afterward. * * * I was present all the time." When asked if there was any conversation or anything

like that on the occasion when the deed was signed the witness said: "No, there was very little said at the consulate." When asked whether any money was paid at that time the witness said: "I had a certificate of deposit for what was the equivalent in England of $7,500, and I tendered that to Mrs. Christian, and her father said, 'Oh, give it to Kentwell,' and I asked her if that was all right, and she said 'Yes,' and I handed it to Mr. Kentwell." When asked if he saw her again after the execution of the deed the witness said: "Yes, we went to a moving picture show. In 1912 moving picture shows in England were not common, but this was more than usual because it was colored pictures of the Durbar in India. * * * Mr. and Mrs. Kentwell, John D., Eliza, my wife, and myself" went together. When asked if he remembered having any talk with Eliza the witness said: "No, I don't remember anything. Eliza—I was trying to explain to her something about the movies, that is, what the Durbar was; apparently the meaning of the word was not commonly understood." This was the last time the witness ever saw Eliza. When asked if on any of the occasions mentioned by him there was anything to indicate anything unusual about her the witness said: "No, I saw nothing and heard nothing that would possibly raise that question in the mind of anybody who had a mind of his own."

Mekia Kealakai, bandmaster of the Hawaiian Band, and his wife Millie Kealakai, visited the Kentwells in Oxford in [254] 1919 remaining in

their home for about two weeks. While they were there he saw Eliza daily and the way he looked at it "she is the servant of the family," doing washing, cooking, cleaning and everything; being helped by Annie Kentwell and her children. He had been frequently in the kitchen while Eliza cooked. When the meals were served all the family, including Eliza, ate together. From his observance of her he found her to be normal.

The testimony of Mrs. Kealakai was in substance the same as that of her husband.

Copies of four letters were received in evidence, the originals of which the Waialua company claims were composed and written by Eliza. Two of these letters were dated December 7, 1908, the third was dated January 29, 1910, and the fourth March 11, 1910. They were apparently addressed to James L. Holt and received by him in Honolulu sometime in April, 1910. The originals of these letetrs were taken by James L. Holt to the office of Castle & Withington and were handed to Mr. W. A. Greenwell, who was a member of the firm of Castle & Withington. Greenwell had copies made, compared the copies with the originals and handed the originals back to James L. Holt. These originals were lost and therefore were not produced. If the contention of the Waialua company regarding the authorship of these letters can from the evidence be sustained they furnish very strong proof that Eliza was mentally capable of binding herself by

the deed which in the instant case is sought to be set aside. We will consider this question later.

It is argued by the Waialua company that the probative force of the evidence which tends to show that Eliza Christian's mentality at the time the deed in question was signed by her was normal is so much more conclusive than the evidence tending [255] to show the contrary that we should decide the question of the validity of the deed in the affirmative.

In this connection particular stress is laid upon what is termed "documentary evidence." This evidence includes the following instruments that were signed by Eliza long before she signed the deed in question: Lease to the Waialua company of March 17, 1905; assignment of rents to Annie Kentwell dated August 31, 1906; lease of August 31, 1906, to Annie Kentwell of Eliza's contingent interest in lands at Makaha; confirmation on June 13, 1907, of a lease by John D. Holt, Jr., to Annie Kentwell; deed dated October 26, 1907, to L. L. McCandless of property at Makaha; option of June 14, 1907, to May K. Brown; on the same day joining in a conveyance by Annie Kentwell and Lawrence Kentwell to May K. Brown of their interest in lands at Makaha. It also includes the following instruments signed by Eliza subsequent to the deed now in question: Deed of May 21, 1912, to J. M. Dowsett; power of attorney to Henry Smith dated January 11, 1923; a similar instrument dated March 16, 1923. None of these instruments, of

course, bears any internal evidence of Eliza's mentality. She did not prepare them nor was she, so far as the evidence shows, a participant in the negotiations to which they related. Their value as evidence of her mentality, therefore, depends on the testimony of those who were present when she signed them. Regarding the instruments which she signed in 1905 and 1906, so far as we are informed from the evidence, the only person present when she affixed her signature was the notary who took her acknowledgments and he is no longer living. As to those that were executed in 1907 there is the testimony of the officers who took the acknowledgments, and as to the one that was executed in 1912 there is [256] the testimony of Henry Holmes. The American consul who took her acknowledgment to this last deed is no longer living. Mack and Bernard, one a notary in New Jersey and the other a notary in New York, while performing a purely ministerial duty, each saw Eliza briefly on two occasions many years before he gave his testimony. Henry Holmes saw her on four occasions while arranging in behalf of his client for her signature to the deed. The testimony of these witnesses is in agreement that she gave no indication in their presence of any mental deficiency. It would not be fair to say, however, that this testimony, based as it was on casual observation, although entirely honest in motive, outweighs that of many contradicting witnesses whose opportunities for observing

Eliza were much more frequent and whose acquaintance with her was much more intimate.

Regarding the powers of attorney executed by Eliza to Henry Smith, which are included in the "documentary evidence" which the Waialua company claims is cogent proof of her mental competency, it appears from the certificate of J. Rose, a notary, that they were executed in the presence of and acknowledged before him at County Hall, Oxford. It appears, also, that the one dated March 16, 1923 (the last one), in addition to being acknowledged before J. Rose, was also witnessed by P. Bates and H. W. Hansford. None of these persons, however, were called as witnesses and we have no means of knowing what their impression of her mental condition was at that time. Like the instruments signed by her, to which we have already referred, these powers of attorney in and of themselves provide no evidence of the degree of her intelligence. [257]

We have already mentioned four letters which the Waialua company claims were written by Eliza to James L. Holt. If she was in fact the author of these letetrs they would afford very strong evidence of her mental competency. While by no means models of English composition or even of grammatical construction, they indicate a reasonably sound mind—certainly a mind of sufficient maturity to execute a valid deed. There is no evidence, however, from which even an inference can be drawn that these letters were the products of Eliza's

brain or her hand. The evidence discloses that they were taken to the office of Castle & Withington by James L. Holt. They were then copied by a stenographer, under the direction of W. A. Greenwell, and the copies, after comparison with the originals, were placed on a file where they remained until they were produced at the trial. The originals were returned to Holt and were apparently lost or destroyed. Whether the originals were autographed or typewritten does not appear. Whether the signature was autographed or typewritten does not appear. Whether the letters were composed by Eliza or someone else does not appear. It is contended by the Waialua company that even so, the letters themselves, by their very construction, indicate that Eliza was their author. If her mind was in the rudimentary state indicated by many of the witnesses this contention is defeated rather than sustained by the letters. Many of the words used, the architecture of many of the sentences and some of the subjects referred to are certainly beyond the ability or the apprehension of one whose mind was that of a child five or six years of age. For instance, the letter of December 7, 1909, is as follows: [258]

"With regard to the proposition made to you in my behalf by Mr. Lawrence K. Kentwell in his letter of October 12, 1909, as to allowing me Fifty Dollars ($50.00) per month, until such time as you are able to dispose or buy my contingent interest in the ahupuaas of Halemano and Wahiawa situate in

the district of Waialua, Oahu, T. H., for the sum of Forty-five Thousand Dollars ($45,000.00) Ten Thousand Dollars of which is to be paid to me in cash upon the execution of a warranty deed duly signed and delivered and the balance of $35,000.00 bearing no interest upon the death of my father John Dominis Holt.

"It is to be understood of course that the monthly allowance which you will advance to me from time to time shall be deducted from the sum of $10,000.00 on the final consummation of the deal.

"Trusting that you will do all you can in my behalf in getting this matter through satisfactory and kindly remember me to all the family at home, I remain with aloha,

"Sincerely yours,"

This letter has no characteristic that must of necessity be attributed to Eliza but is rather indicative of a person of more business experience and education than, according to the evidence, she possessed. The other letters, while not so sophisticated, cannot be said to bear upon their face the impress of her mentality or personality as distinguished from that of her father for instance, who, so far as we are informed to the contrary, is just as likely to have been their author.

In appraising the other evidence in the case we must do so with due regard to the comparative frequency with which the witnesses observed Eliza, the nature of their contacts [259] with her and their descriptions of her conduct and demeanor on differ-

ent occasions and during different periods. For example, the testimony of Mrs. Cushingham, who knew her at Makaha during the first period of her life and who observed her with the view of ascertaining the quality of her mind, strengthened as it is by the testimony of Mrs. Zablan and others, that she was mentally deficient, is much more reliable and conclusive than the testimony of the witnesses who while working on the Holt premises saw her playing on the beach and at other places and who considered her normal.

Coming to the period which Eliza spent at the Catholic school in Honolulu, we find the testimony of the Sisters, whose specific duty it was to teach her and to ascertain whether she was capable of making progress, a surer foundation for a conclusion as to her mentality than the testimony of the many witnesses who as children carelessly saw her playing about the school and noticed nothing abnormal in her conduct. The testimony relating to her mental condition during the short period she was at St. Andrew's priory is almost entirely without conflict—that she was simple-minded. The testimony bearing on her mental condition during the later periods of her life is much more voluminous, and, while not entirely in accord, nevertheless, when considered in connection with the frequency with which the various witnesses observed her behavior in the simplest things pertaining to her life and the opportunities they had of observing her general demeanor, tends so

strongly to establish the fact that she was mentally impotent as to exclude any other reasonable hyopthesis. No child of normal mind, who had spent several years in schools [260] of recognized standing, under the tutelage of competent teachers, would be unable to progress beyond the simplest and most rudimentary studies. No such girl, after she had reached the age of adolescence, would be unable to recite the alphabet and count beyond a few numbers or read only the simplest words or carry on a rational or sensible conversation or take ordinary care of her person or her clothes or intelligently perform any kind of household duties. No such girl, while in a state of advanced and obvious pregnancy, would sit in the daytime on a public street and play marbles with a number of boys, or without shame would answer the calls of nature in public places, in the presence of others, or do the many other irrational things Eliza is shown to have done. No such girl, testifying in a case in which a man was charged with having raped her, would be so utterly unable to give an intelligent account of what had occurred as was Eliza in the Hall case. We cannot accept Lorrin Andrews' testimony that she was merely acting. That assumption is entirely inconsistent with her mental ability. The reasons for her many manifestations of imbecility during the major part of her life are furnished by the testimony of Dr. Good, Dr. Waterhouse and Dr. Morton, who, long after she was a mature woman, tested her men-

tality by scientific methods and were of the opinion that she possessed the mind of a child five or six years old and that her condition was a continuing one. The testimony of these eminent experts is not weakened by that of Dr. Masson who saw her at the maternity hospital in New York but who is not a specialist in mental deficiency and who made no examination of her with reference to her mental condition. Nor is it weakened by the testimony of Dr. [261] Douglas who talked with her at the Kentwell home in Oxford. Dr. Douglas is admittedly not an expert on the subject of mentality and his opinion cannot be given the same weight as that of Dr. Good, Dr. Waterhouse or Dr. Morton.

The overwhelming weight of the evidence requires us to find, and we do find, that on May 2, 1910, Eliza Christian was and at all times has been mentally incompetent to execute a deed or to understand its purpose or effect or to engage in any business transaction of consequence. She was feeble-minded. Born in 1885, in May, 1910, she has the mentality of a child of not more than five or six. She could read only a very few words, and those very simple ones of two or three letters; could write her own name and could write simple words if they were spelled out to her by another person; she could not compose a letter or other writing; she was incapable of being taught any but the simplest things; she could not form any but the simplest sentences; she could not carry on an ordinary, sensible or rational conversation; if asked simple

questions, she could answer them "yes" or "no," and sometimes in a very few more words; she was incapable of reasoning and was easily influenced by suggestion; she was utterly incapable of grasping the significance of a transaction involving the purchase or the sale of land or of valuing property or of determining the wisdom or lack of wisdom of making a sale. In short, we find that at the date of the deed she was a congenital imbecile.

The next question to be considered is the effect of the grantor's mental incompetency on the deed of May 2, 1910. More specifically, the question is, does her mental incompetency render the deed absolutely void, requiring its [262] unconditional cancellation without regard to the equities of the case, or does it render it voidable merely, leaving the rights of the parties, including the cancellation of the deed, to be determined according to equitable principles? This question has been ably and elaborately argued by opposing counsel.

It is contended by the Waialua company that the deed is voidable, that is to say, it is a valid deed until set aside by judicial order, and that a careful balancing of the equities, as that term is defined by law, and as such equities are disclosed by the evidence, must bring us to the conclusion that the deed should not be canceled and that the decree appealed from should be reversed.

On the other hand, it is contnded on behalf of the petitioner that the deed is absolutely void and

should be canceled regardless of the effect of such action upon the Waialua company and regardless of the burdens that may be cast upon it by the cancellation. As an alternative contention it is claimed on behalf of the petitioner that even if it should be decided that the deed is voidable and that it is therefore necessary to consider the equities of the case, such consideration must bring us to the conclusion that the deed should be canceled and the decree appealed from affirmed.

If Eliza R. P. Christian prior to signing the deed had, in a proper proceeding, been judicially ascertained to be mentally incompetent, we think there can be no doubt that the deed would be entirely void. Such adjudication would be notice to the world of her mental state and whoever dealt with her would do so at his peril. We think, also, that if the Waialua company, or its agents duly authorized to obtain [263] her signature to the deed in question, and actual knowledge of her incompetency or had knowledge of facts which would put a reasonable person upon inquiry, which inquiry if honestly pursued would lead to such knowledge, the deed would, as between the parties, be entirely void.

There is no evidence, and indeed it is not even suggested, that there had been any prior adjudication of mental incompetency, so that situation is not really before us. It appears from the evidence that David L. Withington, long deceased, in pursuance of the direction of the Waialua company, went to England for the purpose of completing the

purchase of Eliza's interest in the lands and obtaining a deed from her. There is no dispute that Withington was the Waialua company's agent for this purpose and that he was the only representative of the company present at the time the transaction was closed. There is no evidence that prior to his arrival at Oxford Withington had ever seen Eliza or had been informed that she was mentally incompetent. Annie Kentwell's deposition contains the only testimony as to what occurred at the time the sale of Eliza's interest in the land was being discussed at Oxford. Her testimony on this subject is as follows: "I said to Mr. Withington, 'She is non compos mentis,' Mr. Withington said, 'I know it is all right we are taking the risk,' then my husband spoke up and said to me, 'it is all right dear, leave it to me.' * * * I said, 'If that is the case leave it to you then.' " This witness is greatly discredited by her thoroughly proven desire and that of her husband, Lawrence Kentwell, to facilitate the sale of Eliza's interest. Under these circumstances it is highly improbable that she would have done or said anything that might [264] have jeopardized the fulfillment of those wishes.

Leaving out Annie Kentwell's testimony as being unreliable, and deciding independently of it whether Eliza's mental condition was so apparent that it was discoverable by ordinary observation and was therefore in a legal sense known to Withington, we think it only fair to again refer to the testimony

of the notaries in New Jersey and New York and the testimony of Dr. Douglas and that of Mekia Kealakai and his wife and also to that of Henry Holmes. None of these witnesses saw anything about her indicating an impaired mind. It is true that in deciding the question whether Eliza was mentally incompetent we have not followed the testimony of these witnesses, nevertheless we think it of sufficient weight concerning the impression she made upon superficial observers to justify the conclusion that Withington, who is not shown to have had any closer contact with her than did these witnesses, likewise saw nothing in her to cause him to suspect that she was not of normal mind. Of course, if Withington, knowing of her incompetency, had taken the deed from her notwithstanding, it would have been a highly dishonorable and unprofessional act and thoroughly inconsistent with the character and reputation which he is shown by the evidence to have possessed. During the testimony of Arthur Withington relative to the professional and personal character of his brother, David Withington, counsel for petitioner made the following statement in open court: "I want to add my personal commendation of the remarks of witness and say that we do not come before this court with any intent or desire in any way to besmirch the name of Mr. David L. Withington. We agree that he was a man of estimable character. The only charge in this case is the mistake that [265] was made in this instance, as is apt to be made by the best of us."

Assuming, however, that the Waialua company had no knowledge of Eliza Christian's incompetency, it still remains to be decided whether the deed in question is nevertheless void or merely voidable. Upon this question courts of last resort are not in entire harmony.

Counsel for the petitioner claims with great earnestness that the rule laid down in Dexter v. Hall, 82 U. S. (15 Wall.) 9, 20, 21, is controlling in the instant case. In the Dexter case one Hall, while an inmate in a lunatic asylum in Philadelphia, signed and acknowledged a power of attorney to his brother-in-law, Harris, empowering him to sell certain lands which he (Hall) owned in California. In pursuance of this power Harris conveyed the lands to certain persons who in turn conveyed them to Dexter. Subsequently Hall died in the asylum, leaving a widow and four children who brought an action of ejectment against Dexter for the recovery of the lands. Their contention was that the power of attorney to Harris was void because of Hall's mental condition at the time he executed it and therefore the title to the lands never passed out of him. The Supreme Court of the United States, which ultimately decided the case, said: "Looking at the subject in the light of reason, it is difficult to percieve how one capable of understanding, and of acting in the ordinary affairs of life, can make an instrument the efficacy of which consists in the fact that it expresses his intention, or, more properly, his mental conclusions. The fundamental idea of

a contract is that it requires the assent of two minds. But a lunatic, or a person non compos ments, has nothing which the [266] law recognises as a mind, and it would seem therefore, upon principle, that he cannot make a contract which may have any efficacy as such. He is not amenable to the criminal laws, because he is incapable of discriminating between that which is right and that which is wrong. The government does not hold him responsible for acts injurious to itself. Why, then, should one who has obtained from him that which purports to be a contract be permitted to hold him bound by its provisions, even until he may choose to avoid it? If this may be, efficacy is given to a form to which there has been no mental assent. A contract is made without any agreement of minds. And as it plainly requires the possession and exercise of reason quite as much to avoid a contract as to make it, the contract of a person without mind has the same effect as it would have had he been in full possession of ordinary understanding. While he continues insane he cannot avoid it; and if, therefore, it is operative until avoided, the law affords a lunatic no protection against himself. Yet a lunatic, equally with an infant, is confessedly under the protection of courts of law as well as courts of equity. The contracts of the latter, it is true, are generally held to be only voidable (his power of attorney being an exception). Unlike a lunatic, he is not destitute of reason. He has a mind, but it is immature, insuffi-

cient to justify his assuming a binding obligation. And he may deny or avoid his contract at any time, either during his minority of after he comes of age. This is for him a sufficient protection. But as a lunatic cannot avoid a contract, for want of mental capacity, he has no protection if his contract is only voidable." [267]

While the language of the court is broad enough to include all contracts of insane persons, whether their insanity had been judicially predetermined or not, or whether it was known or unknown to those dealing with them, the case which the court actually had before it was the act of a man who was, at the time the power of attorney was executed, confined, under commitment, in a lunatic asylum. This in itself was sufficient to inform anyone coming in contact with him that he was in no condition to transact business and that it would be hazardous to deal with him. It cannot be said, therefore, that the facts before the court required it to decide or that it had in mind and therefore intended to decide that the deed of a mentally incompetent person, whose condition had not been judicially ascertained and was not otherwise brought to the attention of those for whose benefit the deed was made, was not voidable merely but utterly void.

In Luhrs v. Hancock, 181 U. S. 567, 574, the court said: 'The deed of an insane person is not absolutely void; it is only voidable; that is, it may be confirmed or set aside." The facts which gave rise to this expression were as follows: On Febru-

ary 27, 1886, the legal title to a certain tract of land in Arizona was in one William A. Hancock. On that date Hancock deeded the property, which was a homestead, to his wife, Lilly B. Hancock. On March 5, 1892, Herrick & Luhrs obtained a judgment against William Hancock upon which execution issued and the property, which Hancock had conveyed to his wife, was sold to George H. N. Luhrs, who received a sheriff's deed. On March 21, 1892, Mrs. Hancock and her husband, who had borrowed money from one Robert Allstatter, executed to Allstatter a mortgage on the premises. This mortgage was foreclosed and [268] Thomas W. Pemberton became the purchaser at the foreclosure sale, and on February 14, 1895, received a sheriff's deed and took possession of the premises from the Hancocks. Luhrs, who held the deed from the sheriff under the execution sale but who had never been in possesison of the property, brought an action of ejectment against the Hancocks, to which action Pemberton was afterwards made a party. Luhrs failed in the suit and Pemberton prevailed. On appeal to the supreme court of Arizona the judgment of the lower court was affirmed and on appeal from that court to the Supreme Court of the United States the judgment was also affirmed. The foundation of Pemberton's title was the mortgage which the Hancocks had executed to Allstatter and in order to defeat his rights under this mortgage it was sought to introduce evidence of the insanity of Mrs. Hancock at the time of its execution.

In certifying to the Supreme Court of the United States the exceptions that were taken to the rulings of the trial court, the supreme court of Arizona included the following: "(3) The rejection of evidence of the insanity of Mrs. Hancock at the time she executed the mortgage to Robert Allstatter, the foundation of Pemberton's title. (4) The admission in evidence of the note and mortgage over the objection of plaintiff claiming Mrs. Hancock insane and incompetent to make them." These two exceptions are the basis of the language which we have quoted from the opinion of the Supreme Court of the United States. Whether Mrs. Hancock had been adjudicated insane and placed under guardianship or whether the mortgagee knew of her insanity does not appear. We think it may be fairly assumed, from the ruling of the court, that neither of these conditions existed. If either had existed it seems obvious that the Dexter [269] case would have been adhered to or, if it was thought that the doctrine there announced was unsound, it was have been overruled. The only reasonable conclusion is that in the Luhrs case the court intended to lay down the rule so often announced by other courts, that the contract of an insane person whose infirmity had not been adjudicated and was unknown to those dealing with him is not entirely void but voidable.

Kendall v. Ewert, 259 U. S. 139, 146, is also urged upon our attention as laying down the rule that the deed of a mentally incompetent grantor is entirely

void. Confining ourselves to the facts of that case which are pertinent to this question, it appears that Redeagle, a Quapaw Indian, executed a quit-claim deed to one Ewert to certain lands. At the time he did this Redeagle was a common and habitual drunkard. Speaking of the effect of such extreme and continuous use of intoxicating liquors upon the mind the court said: "That habitual drunkards are not competent to properly transact business is so widely recognized in the law that in many States statutes provide for placing them under a guardian or committee, with authority to put restraint upon them and to preserve their property, not less for themselves than for those dependent upon them. A typical statute makes 'all laws relating to guardians for lunatics, idiots and imbeciles, and their wards * * * applicable to the guardians' for drunkards. (Ohio General Code, §11011.) The extent to which one must have fallen below the standard of ordinary business capacity before he will be generally recognized in a community as a common drunkard is so notorious that we do not hesitate to say that evidence of competency entirely clear should be required to sustain a transaction in which such a person has plainly, as in this [270] case, been overreached by a person dealing with him who is competent and aggressive. Men so reduced will sacrifice their property, as they have sacrificed themselves, to the craving for strong drink; and Ewert's letters show that he knew perfectly well that the Indian with whom he was deal-

ing had reached that unfortunate stage of decay." Upon these facts the court held that the deed was void. Most assuredly so, for the obvious reason that Ewert, the grantee, knew of the grantor's mental deficiency. We do not understand that this rule is even questioned. We know of no United States Supreme Court decision directly holding that the deed of a mentally incompetent grantor who is not under judicial guardianship and whose impaired mentality is unknown to those dealing with him is absolutely void. Luhrs v. Hancock, supra, seems to indicate that such a deed is voidable merely.

In Clark Car Co. v. Clark, 11 F. (2d) 814, 819, also called to our attention in behalf of the petitioner, the court said: "Under the weight of federal authorities, a contract executed by the attorney in fact for an insane person is absolutely void regardless of the other party's good faith, or whether or not he had notice of the insanity," citing Dexter v. Hall, supra. Again, however, the court by this language lays down a rule which is broader in its scope than the facts before it. It appears that one Clark had executed a power of attorney to his agent Hummel, authorizing Hummel to transact certain business for him and in his stead. Hummel, purporting to act under this power of attorney, had certain dealings with Lanahan in regard to Clark's property. Subsequently, after Clark's restoration to sanity, he brought a suit to set aside these transactions and it was in this connection that the language [271] above quoted was used. The court

also said: "In this application of law by the federal courts, the question of notice on the part of Lanahan and Hummel as to Clark's condition at the time of the execution of this deed is not important, for the minute Clark became mentally incompetent, his power of attorney was at least suspended during the period of the incompetency, and any contracts executed during that period would be absolutely void. However, both Hummel and the defendant Lanahan had notice of Clark's serious condition." In view of this last statement it would seem that the broad doctrine laid down by the court was dictum.

Edwards v. Davenport, 20 Fed. 756, is often referred to in support of the view that the contracts of mental incompetents are under all circumstances entirely void. In that case Davenport, who was an imbecile, had executed a mortgage to Jonathan Edwards as trustee for the Equitable Trust Company of New London, Connecticut. The mortgagee had no knowledge of Davenport's mental condition. In a suit to foreclose the mortgage the circuit court held that the mortgagee acquired no rights under it as against a certain interest which Davenport owned in the property because of his imbecility. In reaching this conclusion the court felt obliged to follow Dexter v. Hall, supra. The inapplicability of Dexter v. Hall to a case in which the grantee was ignorant of the incompetency of the grantor has already been discussed.

What seems to us to be the better rule is thus stated in 32 C. J. 742 (§528): "The requisites or essentials of conveyances generally apply to conveyances by insane persons. A conveyance will be invalidated by mental incapacity on the part of the grantor. There is some conflict of authority regarding [272] the effect of an insane person's conveyance. While some confusion has arisen by reason of the use of the term 'void' and 'voidable,' and there are cases which have held that the conveyance of an insane person, who has not been so judicially adjudicated, is not merely voidable but absolutely void, and that the doctrine of innocent grantee has no application to such a conveyance, the great weight of authority is in favor of the rule that such conveyance is voidable and not absolutely void." Devlin, in his carefully prepared work on deeds, says (§73): "The deed of a person non compos mentis who is not under guardianship transfers a seisin and is merely voidable." In 9 A. & E. Enc. L. (2 ed.), the general rule is given as follows (p. 119): "A person whose mind is so unsound as not to have capacity to contract is for the same reason incapable of making a binding deed of conveyance. But the deed of one who has not been judicially declared insane is not wholly void; it conveys the seisin, and must therefore be avoided at the grantor's instance after restoration to reason, or at the instance of his heirs or legal representatives after his death, or his privies in estate, or legal guardian, at any time until by lapse of time or

legal affirmance the right to avoid is lost." Regarding what the author considers the minority rule, it is said (p. 120): "On the contrary, it has been held that all conveyances of insane persons, except feoffments and conveyances by matter of record, are absolutely void and of no effect." The universal rule is said to be (p. 121): "And if such person is under guardianship, or has been judicially declared insane, it is universally held that his deed is absolutely void."

As we have already observed, the deed of a person whose mental incompetency is known to those dealing with him [273] is in the same category as the deed of a person whose mental incompetency has been judicially determined. In Brewster v. Weston, 235 Mass. 14, 16, the Court said: "While some confusion has arisen by reason of the use of the terms 'void' and 'voidable,' it is settled in this Commonwealth that the deed of an insane person is not void, but voidable, and may, after the grantor is restored to his right mind, be adopted and ratified. After a careful examination of many cases we are convinced that this is the prevailing doctrine in this country and that is it a sound doctrine.

It is contended on behalf of the petitioner that in the instant case there is no real distinction, so far as the rights of the parties are concerned, between a deed that is absolutely void and one that is voidable; that in either event the deed in question must be canceled regardless of whether the

grantor was fairly dealt with or not. On the other hand, it is contended by the Waialua company that the deed, being voidable, should not be canceled if it would be inequitable to do so. Again we encounter confusion in the law.

The rule contended for on behalf of the petitioner is thus stated in 3 Thompson on Real Property, 1007-1009 (§2848): "It is immaterial that in taking the deed the purchaser acted in good faith, and without knowledge of the grantor's insanity, and that this had not been judicially declared. One who deals with an insane person, as one who deals with an infant, does so at his peril. The fairness of the purchaser's conduct can not supply the grantor's want of capacity. Insanity is not always apparent nor is the minority of an infant always apparent; and there may be a loss in dealing in good faith with either; [274] but the rules of law can not be changed in order to avoid all possible loss in either case. * * * The deed of an insane person not under guardianship may be avoided not only as against the grantee, but as against subsequent bona fide purchasers from the latter. Where an insane person is entitled to avoid a conveyance as between himself and his immediate grantee, he is also entitled to avoid it as between himself and any grantee or mortgagee holding under his grantee. 'When a man is defrauded, he may, as against his grantee, avoid his deed, but not against those deriving in good faith, and for an adequate consideration, a title from such grantee. He has the ability to convey an indefeasible title, and he does convey such title

to all bona fide purchasers from his grantee. The insane man has not the power to convey such indefeasible title. This incapacity inheres in all titles derived from him. The grantee whose title is thus derived must rely on the covenants of his deed. He risks the capacity to convey of all through whom his title has passed. The right of infants and of insane alike to avoid their contracts is an absolute and paramount right, superior to all equities of other persons, and may be exercised against bona fide purchasers from the grantee.'" 2 Black on Rescission and Cancellation 718-720 (§254) announces the same rule.

In Hovey v. Hobson, 53 Me. 451, 453, the court said: "The deed of an insane man not under guardianship is not void but avoidable, and may be confirmed by him if afterwards sane, or by his heirs. If under guardianship, the deed is absolutely void * * *. The right of avoiding a contract exists, notwithstanding the person with whom the insane man contracted was not apprised of and had no reason to suspect the existence of such insanity, and did not overreach him by any fraud or deception." [275] In Brewster v. Weston, supra, the Court, in addition to what we have already quoted, said: "As a contract made by an insane person is voidable, it is not affected by the circumstance that the other party acted fairly and without knowledge of the want of mental capacity or of circumstances which ought to have put him on inquiry, because he who deals with one who

is insane or with an infant does so at his peril." In Hermanson v. Seppala, 255 Mass. 607, 609, decided in 1926, the Court said: "If the plaintiff was insane when the deed was executed, it is not a defence for the defendant to show that he was ignorant of the fact, and practised no imposition. The fairness of the defendant's conduct cannot supply the plaintiff's want of capacity.' Seaver v. Phelps, 11 Pick. 304, 305." There are other courts that take this view of the law.

Judge Story, in his great work on Equity Jurisprudence (14 ed., §§317, 318), makes the following comment on the law which should govern the cancellation of contracts of persons non compos mentis: "The ground upon which courts of equity now interfere to set aside the contracts and other acts, however solemn, of persons who are idiots, lunatics, and otherwise non comptes-mentis, is fraud. Such persons being incapable in point of capacity to enter into any valid contract or to do any valid act, every person dealing with them, knowing their incapacity, is deemed to perpetrate a meditated fraud upon them and their rights. And surely if there be a single case in which all the ingredients proper to constitute a genuine fraud are to be found, it must be a case where these unfortunate persons are the victims of the cunning, the avarice, and corupt influence of those who would make an inhuman profit from their calamities. Even courts of law now lend an indulgent ear to cases of defence against [276] contracts of this nature, and if the fraud is made

out will declare them invalid" (§317). "But courts of equity deal with the subject upon the most enlightened principles, and watch with the most jealous care every attempt to deal with persons non compotesmentis. Wherever from the nature of the transaction there is not evidence of entire good faith (uberrimae fidei), or the contract or other act is not seen to be just in itself or for the benefit of these persons, courts of equity will set it aside or make it subservient to their just rights and interests. Where indeed a contract is entered into with good faith and is for the benefit of such persons, such as for necesaries, there courts of equity will uphold it as well as courts of law. And so if a purchase is made in good faith without any knowledge of the incapacity, and no advantage has been taken of the party, courts of equity will not interfere to set aside the contract if injustice will thereby be done to the other side, and the parties cannot be placed in statu quo, or in the state in which they were before the purchase" (§318).

In Clay v. Clay's Committee, 179 Ky. 494, 495, 496 the court said: "It has been decided in this state and elsewhere, over and again, that the deed of a person of unsound mind, especially before he has been adjudged a lunatic, is not void but is voidable only. * * * The mere fact of insanity, even when clearly proved, is not sufficient ground upon which to authorize a court of equity to set aside a deed; but there must, in addition, exist some other equitable grounds warranting the cancellation. If the

price is adequate and the transaction fair, neither the insane grantor nor his committee has an absolute right to have the conveyance cancelled; and only when there is injustice or inequity will a court of equity be authorized or [277] justified in interposing to annul a transaction and to restore the parties to the statu quo ante. Unless the grantor, by reason of his insanity or imbecility, has been imposed upon and has suffered some injustice, no reason exists for the cancellation of the deed; and without reason therefor the transaction cannot be disturbed." In Matthiessen & Weicherns v. McMahon's Administrator, 38 N. J. L. 536, it is said on the syllabus: "The general rule is that contracts with lunatics and insane persons are invalid, subject to the qualification that a contract made in good faith with a lunatic for a full consideration, which has been executed without knowledge of the insanity or such information as would lead a prudent person to a belief of the insanity, will be sustained." In Scott v. Hay, 90 Minn. 304, 313 the court said: "It must be further held, on this contention, to be the recognized doctrine that where a contract with a person of unsound mind has been entered into in good faith, for a fair consideration, as found by the court here, without notice of anything that would put a prudent person upon inquiry of the infirmity, and has been so far performed that the parties cannot be replaced in their previous condition, it cannot be avoided. The rule has been thus stated by Baron Pollock in Molton v. Camroux, 2 Exch. 487, 502: 'We

are not disposed to lay down so general a proposition as that all executed contracts bona fide entered into must be taken as valid, though one of the parties be of unsound mind. We think, however, that we may safely conclude that when a person apparently of sound mind, and not known to be otherwise, enters into a contract for the purchase of property, which is fair and bona fide, and which is executed and completed, and the property, the subject-matter [278] of the contract, has been paid for and fully enjoyed, and cannot be restored so as to put the parties in statu quo, such contract cannot afterwards be set aside by the alleged lunatic or those who represent him.'" It is said in 2 Pomeroy's Equity Jurisprudence 2010 (§946): "In general, a lunatic, idiot, or person completely non compos mentis is incapable of giving a true consent in equity, as at law; his conveyance or contract is invalid, and will generally be set aside. While this rule is generally true, the mere fact that a party to an agreement was a lunatic will not operate as a defense to its enforcement, or as ground for its cancellation. A contract executed or executory made with a lunatic in good faith, without any advantage taken of his position, and FOR HIS OWN BENEFIT, is valid both in equity and at law. And where a conveyance or contract is made in ignorance of the insanity, with no advantage taken, and with perfect good faith, a court of equity will not set it aside, if the parties cannot be restored to their original position, and injustice would be done." There are

many other authorities of high rank which announce the same view of the law.

After much reading and careful thought, we believe the rule that the deed of a grantor who was mentally incompetent to execute it, but whose condition prior to its execution had not been judicially declared and which in contemplation of law was not otherwise known to those dealing with such incompetent, is voidable only is more strongly supported by reason and justice than the harsher rule that such deed is absolutely and unconditionally void. We also believe that it is in accordance with sound principles of equity and the highest standards of justice to say that such deed, when judically attacked, should not be canceled upon the sole ground that the grantor was mentally incompetent but that in determining whether it should be can- [279] celed the nature of the transaction in all its aspects and the good or bad faith of those dealing with the grantor in respect to such transaction should be carefully considered. In other words, if under recognized principles of equity it would work injustice to the Waialua Company to cancel the deed but would work no injustice to Eliza Christian to permit it to remain unmolested, the cancellation should be refused. On the other hand, if it would work no injustice to the Waialua Company to cancel it but would be unjust to Eliza Christian to refuse to cancel it, the deed should be canceled. When the grantee can be restored to the position it occupied immediately prior to the conveyance,

the deed of the incompetent should be canceled even though it was taken in ignorance of the incompetency and even though the consideration paid was adequate. When, in addition to the foregoing, it is found that in reality the conveyance was not for the benefit of the incompetent and that the grantor did not receive the consideration paid by the grantee, the case for cancellation is made even stronger.

In deciding whether cancellation would work injustice to the Waialua Company we must consider whether it can be restored to the position it occupied immediately before it received Eliza's deed. If it can be restored to that position no injustice will be done it by the cancellation and Eliza's right to cancellation becomes absolute without regard to the Waialua Company's good or bad faith. Having dealt with an imbecile, although in ignorance of her condition, the Waialua Company cannot hold her to her bargain on the sole ground that it acted in good faith if upon her release from it the Waialua Company's status quo can be restored. That is to say, if when [280] the deed is canceled the Waialua Company is left no worse off than it was before the deed was made it suffers no injustice by the cancellation. Of course it cannot claim that it would be worse off because it would be obliged to surrender an interest in land which, from natural causes, such as a greater and more profitable development of the sugar industry, a larger and more competitive market and the acquisition by Eliza of the fee simple estate, had largely increased in value. Certainly

it would lose the benefit of this increment, but this would be no impediment recognized by law to its restoration to its status quo ante. The increment would be to Eliza's property and the loss to the Waialua Company would be of something which in equity never belonged to it.

It must be remembered that Eliza's deed was inoperative as a binding divestiture of her contingent interest or of the larger prospective interest which later matured into a fee simple estate. If there is no equitable reason why she cannot claim her interest, she is entitled to it notwithstanding its present worth by natural increment has grown to be much greater than it was when she signed the deed of May 2, 1910. Take, for instance, the case of a vendee of land who seeks to rescind a contract of purchase and sale on some ground recognized by equity, it certainly would be no defense for the vendor to say that the land from purely natural causes had depreciated in value and therefore he could not be restored to his original position. In Dickerson v. Morse, 203 Ia. 480, 483, 484, the court, speaking on this subject, said: "We may take judicial notice of the fact of the general depreciation in land values since March 1, 1920, but we are not ready to hold that a depreciation in the market value of real estate constitutes a defense [281] to the instant action. A substantial restoration is all that in any event is required. The right to rescind does not depend upon plaintiff's ability to make the adverse party whole in a pecuniary sense as to the real estate conveyed. The status quo depends upon

returning to defendant what plaintiff has received. * * * The market depreciation of the land is not a matter affecting the right of rescission." In 9 C. J. 1212 (§101) the rule is stated as follows: "Is is no objection to a restoration of property received on a fraudulent sale that it has fallen in value since the date of the transaction. To entitle a defrauded purchaser to rescission he must do equity, but it does not follow that he must be able to return the property in the condition in which he received it. So if the property is of a perishable nature the holder is not bound to keep it in a state of preservation until the bill is filed. And, when the property is lost in whole or in part, through some inherent defect that existed at the time of its conveyance, plaintiff is called on to restore only what he can." In Neblett v. Macfarland, 92 U. S. 101, 104, the court said: "It is no objection to a restoration of property received on a fraudulent sale that it has fallen in value since the date of the transaction."

The converse of this must be equally true. If the vendor sought rescission on some sound equitable principle, his suit being otherwise meritorious, he certainly would not fail merely because the land from natural causes had increased in value and therefore it would be a disappointment to the vendee to be obliged to give it up. Restoration to the status quo is not prevented by such changes in value. If however, valuable and irremovable improvements are placed on the land in the justified belief that he who placed them there is the owner of [282] the land and

there is no way by which he can be compensated for them, a different question arises.

It is contended by the Waialua Company that its status quo cannot be restored because during the time that intervened between Eliza's deed and the commencement of this suit it, in perfect good faith, erected permanent improvements on the land at the aggregate cost of approximately $425,000. These improvements consist for the most part of pumps, railroads, buildings, reservoirs, ditches, waterways, roads, bridges, fences and an electric plant. They are all parts of an equipment necessary to the profitable cultivation of the land, which is adapted to and used for the raising of sugar cane. If there is not legal method available to the Waialua Company under which it can be adequately compensated for the improvements there would be force in this contention. If there is such a method, however, the contention cannot be sustained for the evident reason that the Waialua Company's rights, in so far as they relate to the improvements, can be fully protected.

It appears from the evidence that at the time Eliza's deed was signed the Waialua Company already owned in fee practically an undivided two-thirds interest in the lands in question. If the deed is canceled and Eliza's interest is thus restored to her she and the Waialua Company will become co-owners of the land as tenants in common. The Waialua Company could then by a suit in equity institute proceedings to have the land parti-

tioned. In such a suit a court of equity in decreeing partition would have ample power to do full justice between the parties. Section 2767, R. L. 1925, which relates to the powers of the court in partition suits, is as follows: "The court shall have power to hear, investigate and determine any and all [283] questions of conflicting or controverted titles or claims either as to the whole of the property or as to any share or interest therein, either with or without the intervention of a jury, as hereinafter provided; to remove clouds upon the title of the property or any share or interest therein; to vest titles by decrees, without the form or necessity of conveyance by minors or unknown or absent owners; to cause the property to be equitably divided between the parties according to their respective proportionate interests therein, as the parties shall agree, or by the drawing of lots; to set apart any particular portion or portions of land to any particular party or parties who by prior occupation or improvement or otherwise may be equitably entitled thereto, and make any proper adjustment or equalization thereof by the sale of other portions and the application of the proceeds for such purpose, or as a condition of any such particular allotment to require payment by such parties of any value of the portion so set apart to them in excess of their proportionate interest in the value of the whole property; to divide and allot portions of the premises to some or all of the parties and order a sale of the remainder, or to sell the whole thereof, where for any reason the partition thereof in kind would be impracticable in whole

or in part or be greatly prejudicial to the parties interested, and by decree or decrees to invest the purchaser or purchasers with title to any property sold, and use the proceeds to equalize the general partition. When partition of two or more separate tracts or parcels of land is sought, the whole share of any party in all of them may be set apart to him in any one or more of the tracts or parcels."

This statute is but an expression of the powers which courts of equity have always had. These powers include that of [284] securing, in one of several ways, compensation to a cotenant who has placed improvements on the land, adopting of course the method which will most clearly do justice to all concerned. For instance, the court may award in severalty to the improving tenant that part or those parts of the common property upon which the improvements are located. If this method is feasible it gives to such cotenant all that his money and efforts have produced. At the same time it takes from the other cotenants nothing to which they are entitled or which had been produced either by their money or labor. If because of the area, location or nature of the lands this method cannot be justly employed, another method that may be adopted is to ascertain the cost or value of the improvements, sell the common property and deduct for the improving tenant the sum of money representing the improvements and then divide the remainder among the cotenants according to their fractional ownerships. It is also permissible, under some circum-

stances, to use one of these methods as to a part of the land and the improvements and the other method as to the remainder of the land and the improvements. Still another authorized method which courts have sometimes found equitable is to require the other cotenants to pay to the improving cotenant the cost of moving the improvements to the portion or portions of land set apart to the tenant who has constructed the improvements, or to other lands owned by him outside the boundaries of the common property, where such improvements can be profitably used. This does not at all exhaust the methods by which the equities of cotenants may be adjusted in a partition suit. The methods we have mentioned are not intended as even a suggestion of what should be done in a suit to partition the Holt lands, but merely to illustrate the broad powers courts have in suits of that kind. [285]

We are not at liberty under the pleadings and the evidence before us to adopt any of the methods that would be appropriate in a partition suit. Since, however, such a suit will be available to the Waialua Company the improvements which it placed upon the land do not constitute an obstacle to its restoration to its status quo. In order to restore the Waialua Company to its status quo, the sum of $30,000, the consideration paid for Eliza's interest, together with interest thereon, must be returned or secured to it. There is an absolute offer in the petition to make this restitution. How it is to be made will be considered later.

Eliza's status quo will be automatically restored upon cancellation of her deed. She will then occupy the position she would have occupied if the deed had never been signed by her. That is, she will be the owner in fee of an undivided one-third interest in the land.

There are other considerations which confirm us in the view that it would be inequitable to permit the deed in question to remain uncanceled. One of these is that we believe from the evidence that Eliza never received the money that was paid for her interest. Another is that we also believe from the evidence that the disposal of her interest was not for her benefit.

Of the persons who were present at the American Consulate when Eliza's deed was signed we have only the testimony of Annie Kentwell as to what occurred. When asked for her recollection as to the delivery of any check at that time she said: "As far as I can remember I think Mr. Withington gave the cheque to my husband but I am not quite sure; he may have given it to Mr. Holt, I am not sure." When asked if there was one check or more than one she said: "I cannot say. I cannot remember that." [286] The witness was asked this question: "I will ask you, Mrs. Kentwell, so far as the monies recited as having been paid in the document of May 2, 1910, the recitation there being that the sum of 35,000 dollars was paid, has Mrs. Christian to the best of your knowledge ever received that sum or any portion of that sum?" to which she answered, "No." When asked whether to her knowledge

Eliza Holt Christian, at the time the deed was signed, had any banking account in Oxford or anywhere else, she answered: "She did not," and when asked whether to her knowledge Eliza received any sum of money at that time personally, the witness answered: "No, she did not receive any." The witness also said that so far as she knew Eliza had not had any sum of money since the execution of the deed other than a few shillings she might have had for making purchases.

There is no apparent reason for disbelieving this testimony. On the contrary it is so strongly corroborated by other circumstances as to be convincing. It is evident that the dominant influence in Eliza's affairs was Lawrence Kentwell, a man of considerable business experience and an educated lawyer. All of the negotiations for the sale of Eliza's interest in the Holt lands were carried on and concluded with him. When Henry Holmes went to Oxford to close the option on the Makaha lands most of his consultations were with Kentwell and when the money was paid it was paid to him. Our belief from the evidence is that Eliza was so mentally incompetent that she was incapable of the least appreciation of the value of money or of dealing in any way with a bank, either in the deposit or withdrawal of money. The weight of the evidence is entirely in accord with this view. The conclusion, therefore, that it was not Eliza but Kentwell who re- [287] ceived the money paid for her interest in the Holt lands seems inescapable. If it was paid to her whatever became of it? According to Annie Kentwell

she never had a bank account and never had any money except very small change. There is no evidence that when a receiver was appointed for her in England any such sum as $30,000 was turned over to him. We think it by no means a strained inference that the money was also used by Lawrence Kentwell for his own purpose.

That it was not beneficial to Eliza to dispose of her interest at the time the deed was signed is obvious. She was then living with her father and the Kentwells at the home of the latter in Oxford. Her life, because of her imbecile condition, was very restricted and her wants were accordingly simple. There was no necessity for her to have more than enough money to supply them. Annie Kentwell, by the instrument of August 31, 1906, to which we have already referred, had undertaken to support Eliza during her life. She was in no danger, therefore, of becoming a public charge or of not being supplied with the things necessary to her sustenance and comfort. In her circumstances it would clearly be the part of wisdom to hold on to her contingent interest when by doing so she might eventually become owner of a vested and more valuable interest. It was certainly of no benefit to her to exchange her interest for a sum of money which she did not need and which she herself did not receive.

It is contended on behalf of the petitioner that there are other reasons why the deed should be canceled. One of these reasons is that in taking th deed from James L. Holt to Eliza's interest the

Waialua Company violated what was then a provision of section 55 of the Organic Act. The provision was as follows: [288] "That no corporation, domestic or foreign, shall acquire and hold real estate in Hawaii in excess of one thousand acres; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States * * *." This provision evidently was inteded to place a restriction upon the power of corporations to acquire lands in the Territory and was for the protection of the public and not for that of individual grantors. The penalty for a violation of the provision is not the reversion of the lands to the grantor, but their escheat to the United States Government. We think, therefore, that the petitioner can claim no advantage from the violation of the Organic Act complained of.

Another reason assigned for the cancellation of the deed is that the consideration was inadequate. We cannot agree with this. At the time the deed was signed Eliza's interest was entirely contingent. Whether it ever ripened into an absolute interest depended on her survivorship of her father who was the life tenant. If she predeceased him the fee simple interest upon his death would vest in his heirs at law then living. In this event the Waialua Company would get nothing by its deed nor would it be able to recover the consideration which it had paid. Because of Eliza's imbecility and her inability to take the care of herself which a person of normal

mind would be able to take, her life was encompassed by many hazards to which the life of a normal person is not exposed. It is very doubtful whether any reliable insurance company would have issued a policy on her life. During the negotiations for the purchase of her interest there was some talk of procuring such a policy but this was abandoned. At the time the deed was signed Eliza's father was seventy-one years of age, and while [289] it was unlikely that he would marry and beget other children, it was not beyond the range of probability that he would adopt children who under the law would also become his heirs. Even, therefore, if Eliza survived him there might be other heirs with whom the fee simple estate would have to be shared. In this event Eliza's interest would be correspondingly diminished, and what the Waialua Company obtained from her would to the same extent be diminished. In 1918 John D. Holt did endeavor to adopt the Kentwell children—six in number—and his effort failed solely for the reason that the proceedings were not in accordance with Hawaiian statutes.

While the Waialua Company was negotiating for the purchase of Eliza's interest, L. L. McCandless, a man of large financial means and an experienced dealer in agricultural lands in this community, was also endeavoring to purchase it. It is inferable from the evidence that he knew of the Waialua Company's activities and also knew what it had offered. Notwithstanding this he offered the same amount and

at no time was his offer increased. This is a strong indication that McCandless considered $30,000 to be all Eliza's interest was then worth. It appears from the testimony of James L. Holt that as far back as 1908 Lawrence Kentwell was trying to dispose of Eliza's interest and there is no evidence that at any time more than $30,000 was offered for it. Prior sales of undivided interests in these same Holt lands tend to show a market value of not exceeding $30,000 for a one-third contingent interest. The trial judge, by the application of certain mathematical formulae based on mortuary tables, reached the conclusion that her interest was worth $71,778.20. The problem that confronted the Waialua Company was not, however, [290] a mathematical problem but a human problem. Its purchase of her interest was a speculation that might or might not turn out to its advantage, according to subsequent events. If nothing transpired to destroy or diminish it the Waialua Company would be the gainer, but if its hopes in that regard were disappointed by Eliza's predecease of her father or the coming into existence of other heirs, it would be the loser. The success of its speculation could not be predicated upon any mathematical formula.

It may be safe enough for well-managed insurance companies to base their estimates of risk on Mortuary tables because in the long run, according to the law of averages, their gains exceed their losses. In a single transaction, however, where the value of a contingent interest in land is to be determined,

such tables are by no means a dependable criterion. Tynte v. Hodge, 13 Week. Rep. 172, involved the valuation of a reversion. The actuaries' figures on the value of the reversion varied from £50,000 to £80,000. Auctioneers, basing the value on market value, set it at from £25,000 to £28,000, the latter being the actual consideration paid. The court accepted the latter evidence, and dismissed the bill. The court said: "The calculations of actuaries founded on the average value of lives may, if adopted, work great injustice in a great variety of individual cases. The life in question may be an extraordinarily good or an extraordinarily bad one, which is likely to last beyond the usual time, or the contrary. How, then, can it be right to make a rule govern an individual case to which it may not at all apply? And to this let me add an observation that has occurred to me in reading this case over more than once, [291] that when you are dealing with the question what a man should pay for an insurance or the like, averages are reasonable enough; but to a person who is to purchase a particular reversion, the average value of life is a very poor security. What answer is it to a man, who by the accidental termination of a life loses the whole of his property, to be told that the life ought to have lasted, and then he would have been quite safe? You cannot value property in that way, and it is easily seen how completely the evidence is mistaken on that ground. It may be said that the lender can guard himself by an assurance; but when you are talking of the value of the reversion of a man of

forty-seven as against a life of sixty-eight, one sees at once what extraordinary fallacies may be introduced if you give heed to any such mode of calculating the value." See also Humes v. United States, 276 U. S. 487; Vanderbit v. Eidman, 196 U. S. 480.

It is further claimed that James L. Holt, the nominal grantee in the deed, received a secret profit from the transaction and that this is also a reason why it should be canceled. The chief justice finds from the evidence that James L. Holt did make such a profit and is of the opinion that this was inequitable and unjust to Eliza and therefore emphasizes the correctness of a decree of cancellation. The majority of the court, however, deem it unnecessary to pass upon this question.

It is contended by the Waialua Company that in no event can Eliza's deed be canceled because for nearly twenty years after it was signed no legal steps were taken to have it set aside and that this constitutes laches on her part which debars her from the relief which is now sought in her behalf. It is [292] also contended that she is barred by our statute of limitations.

That laches cannot be imputed to a person in the mental condition that Eliza Christian was in when she signed the deed is too well settled to require discussion. 21 C. J. 241, states the rule as follows: "Laches cannot be imputed to one of unsound mind; and mental affliction not wholly incapacitating plaintiff may excuse delay. A lunatic being under

the protection of the court, a suit in his behalf is in time if brought promptly after the appointment of a committee or guardian, and is not barred by the laches of a next friend or others not legally chargeable with the protection of his rights. But a person must proceed with reasonable promptness after recovering his reason.' Of course, if after the deed was signed Eliza had become of normal mind, it would have been necessary in order to escape the effect of laches for her to institute proceedings to have the deed canceled within a reasonable time after her disability was removed.

Regarding the contention that her suit is barred by our statute of limitations, it is argued that it being an action in personam the bar of six years fixed by section 2639, R. L. 1925, is applicable. This section provides that "the following actions shall be commenced within six years next after the cause of such action accrued, and not after * * * ."

Assuming that the present action is included in the enumeration of those required to be brought within six years, we must consider whether in view of Eliza Christian's mental condition it was necessary to commence the instant suit within the period mentioned in the statute.

It is contended that this was necessary for the reason that section 2648, R. L. 1925, specifies the classes of persons to which the period of six years is not applicable. This section [293] is as follows: "If any person entitled to bring any action in part 1 of this chapter specified (excepting actions against

the high sheriff, sheriffs, or other officers) shall, at the time the cause of action accrued be, either, 1. Within the age of twenty years; or, 2. Insane; or, 3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term of less than his natural life; such persons shall be at liberty to bring such actions within the respective times in said part 1 limited, after such disability is removed." Regarding this section it is argued that the word "insane," as it therein appears, should be given a narrow and technical meaning and that it should not be so construed as to include those whose mental condition is merely enfeebled, no matter to what extent they are thereby incapacitated. More specifically, the argument is that all classes of mental incompetents, except insane persons, are subject to the bar fixed by section 2639, and that Eliza, not being insane but merely feeble-minded, should have brought her action within the six-year period.

We are unwilling to adopt the meaning of the word "insane" which is sought to be attributed to it. Such meaning would place within the rigid prescription of section 2639 all classes of mental incompetents including congenital imbeciles, incurable idiots and persons who from one cause or another are mentally incapable of comprehending the simplest transactions of life and would exclude from it only those who are technically insane. We believe the legislature never intended to perpetrate such an injustice but intended to use the word "insane" in its generic sense. In 32 C. J. 594 (§4), the

author of the text says: "'Insanity' is a broad, comprehensive, and generic term, of ambiguous import, for all unsound and deranged conditions of [294] the mind. It includes every species of organic mental derangement, whatever may be its source or cause, whether the mental condition is congenital, or the result of arrested mental development, or of the act of Providence, or of the party's own imprudence, or of religious excitement, or of physical disease, or of dissipation, or of old age, or of unknown causes, or whether it is personal or hereditary. And it ordinarily implies every degree of unsoundness of the mind, whether it is casual, temporary, or permanent, whether of a mild or violent form; and it includes not only that derangement of the mind, produced by disease of the brain, such as is recognized by law as a defense to crime, which is the sole product of it, but it may also embrace conditions of subverted reason, such as may be produced by intoxication. The word has been frequently used to designate all mental impairments and deficiencies formerly embraced in the terms 'idiocy,' 'lunacy,' and 'unsoundness of mind.'" Eliza Christian's disability not having been removed the statute of limitations never began to run against her and therefore when her suit was brought had not tolled.

For the foregoing reasons it is our conclusion that the deed of May 2, 1910, so far as it affects Eliza R. P. Christian's interest in the land described, should be canceled.

We come now to another phase of the case. As we have already indicated, the trial judge, in addition to decreeing that the deed in question, so far as Eliza Christian is concerned, should be canceled, also decreed that the Waialua Company should pay to her acting guardian the sum of $540,906.07 as and for rents from April 10, 1922, up to the date of the decree. The question arises as to whether a decree for rentals can be entered in the instant suit. [295]

It is contended by the Waialua Company that no such decree can be entered for the reason that on March 17, 1905, it took a lease on the Holt lands at Waialua at an annual rental of $9000, in which lease Eliza R. P. Christian joined as a consenting party; that the term of this lease was twenty-five years, beginning April 1, 1905, and ending April 1, 1930; that by the pleadings in this case the validity of the lease was expressly excluded from the issues and therefore could not properly have been adjudicated by the court below and cannot be adjudicated by this court; that until the lease has been judicially determined to be invalid as to Eliza Christian the Waialua Company's possession of her interest in the Holt lands from April 10, 1922, up to the date of the decree was presumably lawful and therefore it is not liable to her in this suit for rents during this period even though it should be held that her deed of May 2, 1910, was invalid.

We find in the petition the following allegation regarding the lease: "Relief in equity against said lease need not be and cannot be herein prayed for,

respondent's sole claim of right to the said lands being now based upon the said deed of May 2, 1910, hereinafter referred to." In the Waialua Company's answer we find the following reference to the lease: "It admits that relief from said lease cannot be prayed for in this action and alleges that relief cannot be granted from said lease in this action." It is clear from these quotations that the parties were in agreement that no relief against the lease was prayed for or could be granted Eliza in the pending suit. Whether the lease should be held invalid was therefore excluded from the issues which the court was called upon to determine.

Unless the lease is absolutely void on its face or [296] unless it had before its expiration (for the reasons presently to be considered) lost its force, we think the contention of the Waialua Company must be sustained. If its invalidity depends solely on Eliza's mental incompetency at the time she signed it it is in the same category as the deed of May 2, 1910. That is to say, it is voidable and not absolutely void and therefore its effect, so far as Eliza is concerned, would, like the deed, have to be determined according to principles of equity. Since the Waialua Company has not only not been confronted with this issue but has been specifically informed by the petition that no relief arising out of the invalidity of the lease will or can be prayed for in the pending suit it would manifestly be unfair to now decide against it the questions upon which the fate of the lease may ultimately depend.

In these circumstances it was error for the trial court to enter a decree against the Waialua Company for rents and that portion of the decree must therefore be reversed.

The issue of whether the lease was invalid because of Eliza's mental condition was material to her right to recover rents and it should therefore have been presented by the pleadings and not excluded from them. Its omission and exclusion were perhaps induced by the petitioner's supposition that the only claim made by the Waialua Company to Eliza's interest was predicated upon the deed of May 2, 1910. This was, however, a mistaken supposition for if the deed fell the Waialua Company had a perfect right to claim that its posession was justified by the lease. It would be unjust, however, to hold that this cannot be now cured by amendment. Such amendment should in the interest of justice and a complete determination, in this suit, [297] of the rights of the parties be allowed. For that purpose the case should be remanded with proper instructions to the lower court.

It is contended on behalf of the petitioner that as to Eilza the absolute voidity of the lease appears from the lease itself and therefore it is no impediment to her recovery of rents in the instant suit, More specifically, the contention is that it appears from the lease that Eliza had only a contingent interest in the lands and therefore had nothing to demise and that she was not in privity with the lessors. The following cases are cited in support

of this contention: Standard Metallic Paint Co. v. Prince Mfg. Co., 19 Atl. (Pa.) 411; Matlack v. Kline, 216 S. W. (Mo.) 323; Coakley v. Chamberlain, 8 Abb. Pr. (N. S.) 37. These cases, however, are not in point for the reason that in none of them had the remaindermen joined in the lease or in any way assented to it. In Gas, etc., Co., v. Patterson, 184 Pa. St. 364, 367, 368, the lessee had obtained a lease for a specific term from a life tenant. Upon the death of the life tenant he sought, in a suit against persons who at the time the lease was executed were contingent remaindermen but who upon his death became owners in fee of the demised premises, to have the lease canceled upon the ground that it was terminated by the death of the life tenant. The lease was signed not *only the* life tenant but by the remaindermen and contained the following clause: "The said party of the first part hereby guarantees peaceable possession of the premises hereby leased during the term of this lease, and agrees and binds himself that if the said party of the second part should be legally dispossessed thereof, to pay and reimburse the said party of the second part for all improvements made upon the said demised premises by them." In holding [298] that the lease was not terminated by the death of the life tenant, the court said: "In the absence of anything showing a different intention, we would be forced to the conclusion that this lease terminated at the death of Alexander McClure. In this lease, how-

ever, we have the provision quoted in the foregoing findings of fact" (being the provision above quoted). "And we have also the further provision that 'all covenants herein bind executors, administrators and assigns,' which, while in itself and by itself, is of no special significance, but taken in connection with the other provisions quoted, there is shown plainly an intention of the parties, that if the said lessor, through his executor, administrators and assigns, should in any way secure the peaceable possession guaranteed, the lease would be binding upon the parties to the full and of the term thereof, and only in case of actual dispossession would the lessee be entitled to compensation for its improvements, and not other damages. The plaintiff claims it was dispossessed by operation of law, but it was not actually dispossessed, on the contrary all the parties interested have assured it peaceable possession for the full term of the lease, not asking any new or additional consideration, but only that it continue to perform the obligations of the lease to the end of the term thereof, as it seems plain, from the instrument itself, was the intention of the parties, provided it shall have the peaceable possession guaranteed to it." The bill was dismissed.

This case lays down a rule which we believe to be sound, namely, that when the owner of a contingent remainder in land joins in a lease made by the life tenant and the lease contains a guaranty of possession during its term it is not terminated by the death of the life tenant nor does his

death [299] affect the obligation of the lessee to remain in possession of the premises during the remainder of the term. The same rule should, of course, be applied when it is claimed by the former remainderman who had joined in the lease and who had guaranteed possession under it that it was terminated by the death of the life tenant.

Moreover, it is the settled law in this jurisdiction and in many others that a contingent remainder is alienable. Motors Co. v. Nalaielua, ante 418. The prevailing rule is thus stated in 24 A. & E. Enc. L. 406: "On reason, therefore, in any case where the remainderman is not ascertained, but where there is a person in existence in whom the remainder would immediately vest on the present happening of the contingency or the present determination of the particular estate, such person has a possibility coupled with an interest which he may transfer to another, subject, of course, to the same contingency by which it is affected in his hands. And this view is amply supported by authority as well as reason." It would seem inconsistent to say that a contingent remainderman is bound by a conveyance of his interest but is not bound by his consent to a lease of it.

It is also contended on behalf of the petitioner that even if the lease imposed any obligation on Eliza that obligation was merged in the deed which she signed on May 2, 1910, and was therefore extinguished. We cannot agree with this. Of course, if the deed had been a valid conveyance there would

have been no longer a necessity for the Waialua company to claim any rights, including that of possession, under the lease, but the deed, for the reasons we have already expressed, being invalid, the Waialua company's rights under the lease remain unaffected until it is canceled. [300]

The Waialua company further claims that by the instrument of August 31, 1906, Eliza conveyed to Annie Kentwell her interest in the Holt lands during her (Eliza's) life and that by the deed of May 2, 1910, in which Annie Kentwell and her husband Lawrence Kentwell, joined as grantors, this interest passed to James L. Holt and by subsequent conveyance to the Waialua company and therefore its possession of Eliza's interest in the lands was lawful and no decree against it for rents can be entered in this suit. The instrument referred to is as follows:

"This indenture—made this 31st day of August, A. D. 1906, by and between—Eliza R. P. Christian —(the only child and heir of John Dominis Holt, the elder) of Honolulu, Island and County of Oahu, Territory of Hawaii, of the first part, and— Annie Holt Kentwell—of the same place, party of the second part."

"Witnesseth—Whereas the party of the first part has for many years last past been supported and maintained at the home of the party of the second part, and at the cost and expense of the said party of the second part, and

"Whereas—the said first party is the only child and heir of John Dominis Holt, the elder, being also a devisee under the will of R. W. Holt, deceased, and is entitled in expectancy to a certain undivided interest or moiety in certain lands situate at Waialua, Oahu, now leased to the Waialua Agricultural Company, Limited, by lease dated the 17th day of March, 1905, and recorded in the Hawaiian Registry of Deeds in Liber ___ Folio ....., and

"Whereas—by virtue of being such heir of John Dominis Holt, the elder, and such devisee under the will of R. W. Holt, [301] deceased, aforesaid, she, the said party of the first part, shall upon the death of him, the said John Dominis Holt, the elder, be entitled to her share of the rents reserved in said lease aforesaid, which share of said rents aforesaid is now enjoyed by her father, the said John Dominis Holt, the elder, and

"Whereas—the party of the second part has agreed to support and to maintain the party of the first part for and during the period of the natural life of her, the said party of the first part,

"Now Therefore This Indenture Witnesseth—That the said—Eliza R. P. Christian—in consideration of the premises and of One Dollar to her in hand paid by—Annie Holt Kentwell—of Honolulu aforesaid, the receipt whereof is hereby duly confessed and acknowledged and for other and valuable consideration to the said—Eliza R. P. Christian—moving from said—Annie Holt Kentwell—,

she, the said—Eliza R. P. Christian—, does hereby give, sell, assign, release, transfer and set over unto the said—Annie Holt Kentwell—, her heirs, executors and administrators, all her title and interest in and to any and all rents issues and profits to which she may hereafter be entitled or which may be due and payable to her by, through or under the lease to the Waialua Agricultural Company, Limited, dated the 17th day of March, 1905, and recorded in said Liber ___ Folio___ or by virtue of being the only child of John Dominis Holt, the elder, and devisee under the will of R. W. Holt, deceased, together with all and every her right to demand, receive, collect and receipt for all such rents, issues and profits from whomsoever due during the term of the natural life of her, the said—Eliza R. P. Christian—.

"And—it is expressly agreed and understood between [302] and by the parties hereto that the party of the second part shall support and maintain her, the party of the first part, for and during the natural life of said first *part*.

"And—it is further agreed and understood by and between the parties hereto that in case the party of the first part shall survive the party of the second part, the heirs of said second party shall be entitled to perform the covenant of this agreement on the part of said second party to be kept and performed, and they shall during the life of said first party be entitled to the benefit or benefits hereof."

On its face this instrument purports to be an assignment of Eliza's interest in rents, issues and profits and if it is to be given any other interpretation it is because of the implication of law that such assignment is a conveyance of an interest in the land from which the rents, issues and profits are derivable. In Hapai v. Brown, 21 Haw. 499, 505, this court said: "A gift of the income or the rents, issues and profits of property is to be construed as a gift of the property itself unless from some language in the will it appears that the testator intended something different." This is a general rule of construction. See 2 Tiffany on Real Property §441; Beilstein v. Beilstein, 194 Pa. St. 152; Drusadow v. Wilde, 63 Pa. St. 170.

It is contended on behalf of the petitioner that if this is the effect of the instrument it is void for the reason that Eliza had a husband living at the time she executed it and that he did not give his consent in writing as required by section 2993, R. L. 1925. This contention may be passed without decision for the reason that, assuming the instrument to be void as a conveyance of an interest in land, it is nevertheless valid [303] as an assignment of rents. That rents due under an existing lease are severable from the reversion and may be assigned independently of the reversion is well settled. See Kaleiheana v. Keahipaka, 23 Haw. 169, 171. Nor did the provisions of section 2993 present any obstacle to the assignment of rents by Eliza independently of the written consent of her hus-

band. The only restriction placed upon her power to deal with her separate property was that she could not sell or mortgage her real estate without his written consent. In other respects she could deal with it as if she were a feme sole.

Laying aside for the moment the question of whether Eliza was mentally competent to bind herself by this instrument and treating its execution as the act of a mentally competent person it must be assumed that the object she sought to accomplish by it was to provide compensation to Annie Kentwell for her agreement to support Eliza during the latter's life. It must also be assumed that she intended to execute a valid instrument and not one that was invalid. If the instrument which she executed would be ineffectual as a conveyance of her interest in the land but would be effectual as an assignment of rents it should be given the construction which would accomplish Eliza's purpose and not that which would defeat it.

Because of the deed of May 2, 1910, in which Annie Kentwell and her husband, Lawrence Kentwell, joined as grantors, and by which they made a full and complete conveyance of all their interest in the Holt lands, including all claims and demands arising out of the lease of 1905, the instrument of 1906, which we have just been considering, unless hereafter set aside because of Eliza's mental incompetency, is a protection to the Waialua company against the payment to any one of the rents that accrued under the lease. The Waialua company's

liability for [304] rents since the termination of the lease is not involved in this suit.

Whether the instrument of 1906 should be set aside because of Eliza Christian's mental incompetency is not within the issues presented by the pleadings. It should, however, if the petitioner wishes to do so, be made an issue by amendment and the court below will be so instructed.

The decree appealed from, in so far as it relates to the cancellation of the deed of May 2, 1910, is affirmed and the Waialua Agricultural Company will be required to reconvey to Eliza R. P. Christian all of the interest which it has acquired from her under and by virtue of that deed upon her payment to the Waialua Agricultural Company of the sum of $30,000 with interest at six per cent per annum from May 2, 1910, to the date of the decree of this court, or upon her assuring to the Waialua Agricultural Company the payment of said sum together with interest by a mortgage upon the interest so reconveyed or in any other satisfactory manner. So far as it requires the Waialua Agricultural Company to pay to the guardian of Eliza R. P. Christian the sum of $540,906.07 because and on account of rents the decree appealed from is reversed and the case is remanded to the circuit judge with instructions to permit amendments to the pleadings which will serve to put in issue the validity of the lease of 1905 in so far as it may be affected by the mental condition of Eliza R. P. Christian and also to permit amendments to the

pleadings which will serve to put in issue the validity of the written instrument of August 31, 1906, so far as it may be affected by Eliza's mental condition and to receive all evidence that may be offered which is material to these issues and to determine whether the lease and the instru- [305] ment of 1906 were ineffective because of Eliza's mental incapacity and also to determine the question, consistently with such conclusions as may be reached on the issue of the validity of the two instruments and consistently also with the views and findings of this court, of whether the petitioner is entitled to recover against the Waialua Agricultural Company anything by way of rents and damages. An interlocutory decree in conformity with these conclusions will be signed upon presentation.

(s) ANTONIO PERRY.
(s) JAS. J. BANKS.
(s) CHARLES F. PARSONS.

BARRY S. ULRICH
(Ulrich & Hite on the briefs) for petitioner.

A. L. CASTLE and
H. PHLEGER
(Brobeck, Phleger & Harrison and Robertson & Castle on the briefs) for respondent Waialua Agr. Co.

[Title of Court and Cause.]

OBJECTIONS TO ORDER REMANDING CAUSE.

Received and filed in the Supreme Court May 21, 1931. (s) Robert Parker, Jr., Assistant Clerk. [307]

Comes, now WAIALUA AGRICULTURAL COMPANY, LIMITED, Respondent-Appellant above named, and objects to the making and entry of any order whatsoever in the above entitled cause except a decree in its favor reversing the decree of the lower court and dismissing Petitioner's bill.

Dated at Honolulu, T. H., this 21 day of May, 1931.

HERMAN PHLEGER and
ROBERTSON & CASTLE,
By (s) ALFRED L. CASTLE
Attorneys for Respondent-Appellant, Waialua Agricultural Company, Limited.

Service of a copy of the foregoing Objection to Order Remanding Casue is hereby acknowledged this_____.

_____

Attorneys for Petitioner-Appellee. [308]

[Title of Court and Cause.]

ORDER REMANDING CAUSE.

Received and filed in the Supreme Court May 21, 1931, at 10:02 o'clock A. M. (s) Robert Parker, Jr., Assistant Clerk [309]

The above-entitled cause having duly come on for argument in this court upon an appeal duly taken and perfected by WAIALUA AGRICULTURAL COMPANY, LIMITED, an Hawaiian corporation, respondent-appellant herein, from the decree and judgment duly made and entered in said cause by the Honorable Albert M. Cristy, Second Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, sitting at chambers, in equity, on the 16th day of October, A. D. 1929; A. L. Castle, Esquire, of the firm of Robertson & Castle, and H. Phleger, Esquire, of the firm of Brobeck, Phleger & Harrison appearing for said respondent-appellant, and Barry S. Ulrich, Esquire, of the firm of Ulrich & Hite appearing [310] for ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. VON HOLT, her Guardian, petitioner-appellee; and this Court having on, to-wit, April 18, 1931, made, entered and filed its written opinion herein containing its findings of fact and conclusions and rulings of law;

NOW, THEREFORE, in pursuance and effectuation of said opinion and of the findings of fact and conclusions and rulings of law so set forth therein as aforesaid,

IT IS HEREBY ORDERED:

I.

That that certain decree heretofore made and entered by the Honorable A. M. Cristy on October 16, A. D. 1929 and herein appealed from, be and said decree is hereby set aside and the cause is hereby remanded to said Judge of the Circuit Court, together with the opinion and decision of this Court herein, for further proceedings in said Circuit Court consistent with said opinion of this Court made and entered April 18, 1931.

II.

That said Circuit Judge be and said Judge is hereby instructed to permit suitable amendments to be made to the petition and pleadings herein which will serve to put in issue the validity of that certain lease dated March 17, 1905, being Exhibit A-8 in said cause, insofar as it may be affected by the mental condition of the said Eliza R. P. Christian; and said Circuit Judge is further instructed [311] to permit suitable amendments to be made to petition and pleadings herein which will serve to put in issue the validity of that certain instrument in writing of August 31, 1906, being Exhibit 2-G in said cause, insofar as it may be affected by the mental condition of the said Eliza R. P. Christian; and said Circuit Judge is further instructed to receive such further evidence as may be offered bearing upon or relating to any questions of fact as to which findings of fact have not heretofore been

made by this Court, which questions of fact and which evidence are or may be material to the issues thus to be raised by said amended pleadings with reference to the validity of and petitioner's right to cancellation of said lease of March 17, 1905, and said instrument in writing of August 31, 1906, or which are or may be material to the matter of any accounting for rents, issues and profits which may be decreed herein.

III.

That said Circuit Judge be and said Circuit Judge is hereby further instructed, consistently with the conclusions of law and findings of fact heretofore made and reached by this Court and consistent with the views and findings of fact to be made by said Circuit Judge not inconsistent with findings heretofore made by this Court, to determine the question of the validity of said lease of March 17, 1905, and of said instrument in writing of August 31, 1906, and the question of petitioner's right to cancellation of said instruments herein; and said Circuit Judge is further instructed to determine, [312] consistently with the views and findings of this Court, the question as to what, if any, amount and/or measure of relief petitioner is entitled to have and recover against the Waialua Agricultural Company, Limited, respondent herein, by way of rents and damages.

IV.

That said Circuit Judge be and said Judge hereby is instructed to make and enter its final decree herein

consistent herewith, at the conclusion of said further proceedings to be had before said Circuit Judge as aforesaid, which said final decree shall provide:

1. That that certain deed dated May 2, 1910, cancellation of which was and is prayed for herein, be canceled and set aside, in the manner and to the extent that cancellation thereof has heretofore been decreed by said decree of October 16, 1929, herein appealed from.

2. That respondent Waialua Agricultural Company, Limited, be ordered and required by suitable indenture to reconvey to Eliza R. P. Christian, herein appearing by her Guardian as aforesaid, all of the right, title and interest in and to the lands described in the petition herein which it, said respondent, acquired or claimed to have acquired from her through, under or by virtue of said deed of May 2, 1910, upon payment to it, said Waialua Agricultural Company, Limited, by or for her, said Eliza R. P. Christian, of the sum of $30,000.00, together with interest at the rate of 6% per annum from May 2, 1910, to the date of said decree to be [313] entered by said Circuit Judge as aforesaid, or upon the giving of assurance to said Waialua Agricultural Company, Limited, of the payment of said sum together with interest thereon, either by way of mortgage upon the interest so reconveyed or in any other satisfactory manner.

3. That such relief, if any, as to said Judge may seem just and proper consistent with the conclusions reached as aforesaid by said Judge and

with the views, findings of fact and conclusions of law heretofore reached by this Court be granted with respect to that certain lease dated March 17, 1905, being Exhibit A-8 herein, and that certain instrument in writing dated August 31, 1906, being Exhibit 2-G herein.

4. That petitioner do have and recover against Waialua Agricultural Company, Limited, such amount and/or measure of relief, if any, by way of rents and damages as to said Judge may seem just and proper consistent with the conclusions reached as aforesaid by said Judge and with the views, findings of fact and conclusions of law heretofore reached and announced by this Court; and

5. Said Decree, consistent with the opinion and Order of this Court, to further render full and complete equity and justice in the premises.

Made and entered this 21st day of May, A. D. 1931.

BY ORDER OF THE COURT.

[Seal] ROBERT PARKER, JR.
Assistant Clerk
Supreme Court of the Territory of Hawaii.

Approved:

(s) ANTONIO PERRY,
Chief Justice.

[314]

[Title of Court and Cause.]

NOTICE OF ORDER REMANDING CAUSE

Filed May 22, 1931 at 2:05 o'clock P. M. (s) J. A. Thompson, Clerk Supreme Court. [315]

To THE HONORABLE ALBERT M. CRISTY, Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, Sitting at Chambers, in Equity:

YOU WILL PLEASE TAKE NOTICE that in the above-entitled case the Supreme Court has rendered and filed the following order remanding cause.

"ORDER REMANDING CAUSE

"The above-entitled cause having duly come on for argument in this court upon an appeal duly taken and perfected by Waialua Agricultural Company, Limited, an Hawaiian corporation, respondent-appellant herein, from the decree and judgment duly made and entered in [316] said cause by the Honorable Albert M. Cristy, Second Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, sitting at chambers, in equity, on the 16th day of October, A. D. 1929; A. L. Castle, Esquire, of the firm of Robertson & Castle, Phleger & Harrison appearing for said respondent-appellant, and Barry S. Ulrich, Esquire, of the firm of Ulrich & Hite appearing for ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. von HOLT, her Guardian, peti-

tioner-appellee: and this Court having on, to-wit, April 18, 1931, made, entered and filed its written opinion herein containing its findings of fact and conclusions and rulings of law;

"NOW, THEREFORE, in pursuance and effectuation of said opinion and of the findings of fact and conclusions and rulings of law so set forth therein as aforesaid,

"IT IS HEREBY ORDERED:

I.

"That that certain decree heretofore made and entered by the Honorable A. M. Cristy on October 16, A. D. 1929 and herein appealed from, be and said decree is hereby set aside, and the cause is hereby remanded to said Judge of the Circuit Court, together with the opinion and decision of this Court herein, for further proceedings in said Circuit Court consistent with said opinion of this Court made and entered April 18, 1931.

II.

"That said Circuit Judge be and said Judge is hereby instructed to permit suitable amendments to be made to the petition and pleadings herein which will serve to put in issue the validity of that certain lease dated March 17, 1905, being Exhibit A-8 in said cause, insofar as it may be affected by the mental condition of the said Eliza R. P. Christian; and said Circuit Judge is further instructed to permit suitable amendments to be made to petition and

pleadings herein which will serve to put in issue the validity of that certain instrument in writing of August 31, 1906, being Exhibit 2-G in said cause, insofar as it may be affected by the mental condition of the said Eliza R. P. Christian; and said Circuit Judge is further instructed to receive such further evidence as may be offered bearing upon or relating to any question of fact as to which findings of fact have not heretofore been made by this Court, which questions of fact and which evidence are or may be material to the issues thus to be raised by said amended pleadings with reference to the validity of and petitioner's right to cancellation of said lease [317] of March 17, 1905 and said instrument in writing of August 31, 1906, or which are or may be material to the matter of any accounting for rents, issues and profits which may be decreed herein.

III.

"That said Circuit Judge be and said Circuit Judge is hereby further instructed, consistently with the conclusions of law and findings of fact heretofore made and reached by this Court and consistent with the views and findings of fact to be made by said Circuit Judge not inconsistent with findings heretofore made by this Court, to determine the question of the validity of said lease of March 17, 1905, and of said instrument in writing of August 31, 1906, and

the question of petitioner's right to cancellation of said instruments herein; and said Circuit Judge is further instructed to determine, consistently with the views and findings of this Court, the question as to what, if any, amount and/or measure of relief petitioner is entitled to have and recover against the Waialua Agricultural Company, Limited, respondent herein, by way of rents and damages.

IV.

"That said Circuit Judge be and said Judge hereby is instructed to make and enter its final decree herein consistent herewith, at the conclusion of said further proceedings to be had before said Circuit Judge as aforesaid, which said final decree shall provide:

"1. That that certain deed dated May 2, 1910, cancellation of which was and is prayed for herein, be canceled and set aside, in the manner and to the extent that cancellation thereof has heretofore been decreed by said decree of October 16, 1929, herein appealed from.

"2. That respondent Waialua Agricultural Company, Limited be ordered and required by suitable indenture to reconvey to Eliza R. P. Christian, herein appearing by her Guardian as aforesaid, all of the right, title and interest in and to the lands described in the petition herein which it, said respondent, acquired or claimed to have acquired from her through, under or by virtue of said deed of May 2, 1910,

upon payment to it, said Waialua Agricultural Company, Limited, by or for her, said Eliza R. P. Christian, of the sum of $30,000.00, together with interest at the rate of 6% per annum from May 2, 1910 to the date of said decree to be entered by said Circuit Judge as aforesaid, or upon the giving of assurance to said Waialua Agricultural Company, Limited of the payment of said sum together with interest thereon, either by way of [318] mortgage upon the interest so reconveyed or in any other satisfactory manner.

"3. That such relief, if any, as to said Judge may seem just and proper consistent with the conclusions reached as aforesaid by said Judge and with the views, findings of fact and conclusions of law heretofore reached by this Court be granted with respect to that certain lease dated March 17, 1905, being Exhibit A-8 herein, and that certain instrument in writing dated August 31, 1906, being Exhibit 2-G herein.

"4. That petitioner do have and recover against Waialua Agricultural Company, Limited such amount and/or measure of relief, if any, by way of rents and damages as to said Judge may seem just and proper consistent with the conclusions reached as aforesaid by said Judge and with the views, findings of fact and conclusions of law heretofore reached and announced by this Court; and

"5. Said Decree, consistent with the opinion and Order of this Court, to further render full

and complete equity and justice in the premises.

"Made and entered this 21st day of May, A. D. 1931.

"BY ORDER OF THE COURT.

[Seal] "(Signed) ROBERT PARKER, JR.
Assistant Clerk
Supreme Court of the Territory of Hawaii"

Approved

(s) ANTONIO PERRY
Chief Justice

Dated, Honolulu, T. H., May ___, 1931.

BY THE COURT

[Seal] (s) J. A. THOMPSON
Clerk
Supreme Court of the Territory of Hawaii

The form of the foregoing notice is hereby approved, and it is ordered that the same shall issue forthwith.

Dated: Honolulu, T. H., May 22, 1931.

(s) ANTONIO PERRY
Chief Justice [319]

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii.

Eq. No. 2915 Reg. Pg.
At Chambers In Equity

Bill for Cancellation Accounting and Incidental Relief.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. von HOLT, her Guardian,
Petitioner,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED, an Hawaiian corporation, JAMES L. HOLT, and ANNIE HOLT KENTWELL,
Respondents.

NOTICE OF APPEAL AND APPEAL

Filed Oct. 10, 1932 at 12:45 o'clock P. M. Robert Parker, Jr., Clerk Supreme Court.

1st Circuit Court Territory of Hawaii. Filed 1932 Sep 10 A M 10 46 (s) D. K. Stewart, Clerk. [348]

Now comes WAIALUA AGRICULTURAL COMPANY, LIMITED, respondent in the above entitled cause, and gives notice of apeal and hereby appeals to the Supreme Court of the Territory of Hawaii from the decree made and entered in the above entitled court and cause on the 6th day of September, 1932.

Dated at Honolulu, T. H., this 9th day of September, 1932.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
By ROBERTSON & CASTLE
Its Attorneys.

I hereby certify that I have mailed a copy of the foregoing Notice and Appeal to Annie Holt Kentwell by registered mail, to 159 Woodstock Road, Oxford, England, this 9th day of Sept 1932.

(s) ALFRED L. CASTLE

Service of a copy of the foregoing notice of appeal and appeal is hereby admitted this 10th day of September, 1932.

ULRICH & HITE per CMH
Attorneys for Petitioner.

(s) JOHN R. DESHA
Attorney for Respondent, James L. Holt.

Attorney for Annie Holt Kentwell.

I further hereby certify that I served Annie Holt Kentwell with a copy of the foregoing appeal by leaving a copy of the same at the law offices of Ulrich & Hite this 10th day of Sept. 1932.

(s) ALFRED L. CASTLE [349]

[Title of Court and Cause.]

SECOND AMENDED PETITION

EXHIBITS "A", "B", "C", "D", "E", "F", and "G"

Presented at 9:55 o'clock A. M. May 25, 1931. John Lee Kai, Clerk. [350]

Comes now ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. von HOLT (substituted for George H. Holt, Deceased), her Guardian, by her attorneys, Ulrich & Hite, and, as grounds for the relief herein prayed for, shows unto this Honorable Court as follows:

I.

That the said George H. Holt was upon the first day of February, 1927, by order and decree duly entered in the [351] above-entitled Court, appointed guardian in Hawaii of the estate of the said Eliza R. P. Christian, resident in England, and found and adjudged to be an incompetent person, and upon the filing of a bond in the amount of $15,000.00 he, the said George H. Holt, did qualify as such guardian, and at the time of the filing of the petition and commencement of proceedings herein, he, the said George H. Holt was the duly acting and qualified guardian of said incompetent person, and so continued until the time of his death, as hereinafter stated.

That thereafter and during the pendency of these proceedings, the said George H. Holt did die, and on, to-wit, the 11th day of March, 1929, HERMAN

V. von HOLT was by order of the above-entitled Court duly appointed Guardian of the estate in Hawaii of said Eliza R. P. Christian, an incompetent person, as successor to and in the place of the said George H. Holt, deceased, and did duly qualify as such guardian, and ever since has been and now is the duly acting and qualified guardian of said incompetent person, and has been duly substituted herein as guardian of said incompetent, petitioner herein.

II.

That respondent, Waialua Agricultural Company, Limited, is now and at all times hereinafter mentioned has been a corporation duly organized and existing under and pursuant to the provisions of the laws of the Territory of Hawaii, with its principal place of business in Honolulu in said [352] Territory.

III.

That the respondent James L. Holt is a resident of the City and County of Honolulu, Territory of Hawaii, and is a son of James R. Holt and grandson of Robert William Holt, all as more fully hereinafter appears; and that the respondent Annie Holt Kentwell is a resident of Oxford, England.

IV.

That Petitioner, Eliza R. P. Christian, formerly Eliza R. P. Holt, was and is the daughter and sole heir of John Dominis Holt, now deceased, and that the said John Dominis Holt was a son of Robert William Holt, said Robert William Holt having been

a resident of the Territory of Hawaii, and the owner of large properties in said Territory, who died in the year 1862.

V.

That upon his death in the year 1862 as aforesaid, said Robert William Holt, seized of considerable properties as aforesaid, left a will wherein and whereby, among other things, it was provided that the bulk of his estate should be divided into four equal parts, one part of which to go to and become the property of his daughter, Elizabeth M. Aldrich, the remaining three-quarters thereof to be held in trust to pay the income from equal and undivided thirds thereof to each of his sons, Owen J. Holt, James R. Holt, and John Dominis Holt, for their respective lives, with [353] remainder over in fee as to each undivided one-third to the heirs at law of the said three sons as they respectively should die, a copy of which said last Will and Testament of Robert William Holt is hereto annexed, marked Exhibit "A", and by reference made a part hereof. That after the distribution of one-fourth of said estate to said Elizabeth M. Aldrich, daughter of testator, as aforesaid, and after the payment of all debts and specific legacies, there was in said estate and undistributed the following pieces and parcels of real property, situate, lying and being in the district of Waialua, Island of Oahu, Territory of Hawaii, said property being more particularly described as follows:

1. Ahupaa of Paalaa, being Apana 34, L.C.A. 7713, Royal Patent 4475, containing an area of 12,237 acres;
2. The lands described in Royal Patent 973 to Robinson et al., containing an area of 1,942 acres;
3. The lands described in Royal Patent 431 to Kanohanui, containing an area of 100 acres;
4. The lands described in Royal Patent 235 to Topliff et al, containing an area of 36 acres;
5. The lands described in Royal Patent 238 to Anderson, containing an area of 25.8 acres;
6. All Kuleanas or grants lying within the above described land.

VI.

That under and pursuant to the provisions of said Will of Robert William Holt, his son, John Dominis Holt, became [354] and was entitled to the income for life from an undivided one-third of all of the above described lands, and that Eliza R. P. Christian, the only child and sole heir at law of her father, the said John Dominis Holt, as aforesaid, became and was entitled to accede to and become the owner in fee simple of an undivided one-third interest in all of said lands upon the death of her said father, and subject only to her survival of him.

VII.

That the said Eliza R. P. Christian is, was, and at all times hereinafter mentioned has been, insane and mentally incompetent.

VIII.

That for many years prior to 1910, and prior to the happenings of the events in that year hereinafter described, the respondent Waialua Agricultural Company, Limited had used and occupied large portions of the above described lands as a tenant under leaseholds executed to it by persons holding the legal estate in trust pending the death of the life tenants, as aforesaid, and as the purchaser of certain undivided interests in said lands, on a considerable portion of which lands said respondent corporation had planted and grown sugar cane in the course of its business in the cultivation and production of sugar, and other portions of which it had subleased to others for the growth and cultivation of pineapples.

Petitioner alleges upon information and belief, that [355] in the year 1910, becoming desirous of acquiring said lands in fee simple, and more particularly of acquiring the undivided one-third in said land as to which the said John Dominis Holt was entitled to the income for life and as to which the said Eliza R. P. Christian would be entitled to the fee upon his death, the said respondent corporation did undertake, enter upon and carry through the negotiations and transactions more fully hereinafter described:

IX.

That in said year 1910 the said Eliza R. P. Christian was wholly incompetent mentally as aforesaid, and was unable to care for herself or her affairs, and was then residing in Oxford, England,

with her cousin, Annie Holt Kentwell, in whose care she had been for many years; that the said Eliza R. P. Christian was then and there completely under the control of one Lawrence Kentwell, the husband of the said Annie Holt Kentwell; that at said time respondent James L. Holt was residing in Honolulu, Hawaii, and was on friendly terms with and had been in correspondence with the said Lawrence Kentwell; that the said incompetent, the only child and sole heir in expectancy of her father, John Dominis Holt, was of the age of 24 years and, aside from her said mental affliction, was in generally good physical health and condition, whereas the said John Dominis Holt, upon whose death the vesting of the interest in fee in the said Eliza R. P. Christian alone depended, was a man of 71 years of age; that [356] at said time the interest in expectancy in fee in an undivided one-third of said lands to which said incompetent would be entitled upon the death of her said father, was of the value of upwards of $300,000.00, and that all of the foregoing facts and circumstances were well known to respondent corporation, notwithstanding that the true worth and value of said property, dependent upon circumstances peculiarly within the knowledge of said respondent corporation was unknown to and not disclosed to said Lawrence Kentwell, and was, of course, entirely impossible of being understood by said incompetent, petitioner herein.

X.

Petitioner alleges upon information and belief that thereupon the respondent corporation did employ and retain the law firm of Castle & Withington of Honolulu to represent it and act for it in the matter of procuring the conveyance to it of the so-called Christian interest in said property, and that as a first step in the plan then and thereupon undertaken by said respondent and in or about the months of March or April, 1910, the said James L. Holt was induced to come to and attend certain meetings or conferences held in the offices of said attorneys, Messrs. Castle & Withington, in the course of which said James L. Holt was induced to enter into an agreement, portions of which agreement were reduced to writing and signed by the parties to be bound, W. R. Castle signing as Trustee and acting for and on behalf of said respondent corporation, the substance and effect of which [357] agreement was as follows: That it was agreed in substance that the said James L. Holt, being in the confidence of and in contact with said Lawrence Kentwell, under whose complete influence and control was said incompetent, Eliza R. P. Christian, should endeavor to induce said Lawrence Kentwell to procure the signature of said incompetent to a deed purporting to convey the interest of said incompetent in said land at a cost to respondent corporation not to exceed the sum of $40,000.00, which moneys, it was agreed, were to be furnished by said respondent cor-

poration through its representatives; it being further agreed that, notwithstanding that said James L. Holt was without funds to make said purchase, and notwithstanding that said purchase was to be made for immediate retransferal to said respondent corporation or its representatives or appointees in trust, yet that the conveyance, if procured, was to be taken in the name of said James L. Holt; that it was further agreed that upon procuring of said conveyance said James L. Holt was then and thereupon to execute his conveyance of the interest to be so acquired from said Eliza R. P. Christian, together with his own similar and equal interest in expectancy in said lands as the sole heir at law of James R. Holt, and that he was to receive from said respondent as consideration for his services in the premises and for his interest in said property the sum of $60,000.00; a further sum of $20,000.00 to be paid to one John F. Colburn at that time the assignee and holder of the life interest in said property [358] of John Dominis Holt and James R. Holt, and trustee for James L. Holt for certain purposes, making a total contemplated expenditure to said corporation of $120,000.00 for petitioner's interest as well as for the other interest above indicated in said lands.

XI.

Petitioner alleges upon information and belief that then and thereupon said James L. Holt, pursuant to said agreement, did endeavor to ascertain from England whether or not, if attempted, said

plan might be reasonably expected to be successful, and having, as it was thought, ascertained that such was the fact, David Withington, Esquire, a member of said law firm of Castle & Withington, representing respondent corporation in the premises as aforesaid, who was then in the city of Boston, state of Massachusetts, was instructed by said respondent corporation to proceed forthwith to England and there to appear, ostensibly as attorney for James L. Holt, but in fact acting in the interests of respondent corporation as aforesaid, in an endeavor to procure through said Lawrence Kentwell, or in such manner as could be done, a conveyance of the said Christian interest at an expenditure to said corporation of not to exceed $40,000.00.

XII.

Petitioner alleges upon information and belief that thereupon said David Withington, Esq. did forthwith proceed to England, and did there call upon said Lawrence Kentwell [359] in whose home was the said incompetent, Eliza R. P. Christian; that the said David Withington, representing said respondent corporation as aforesaid, though ostensibly representing said respondent James L. Holt as aforesaid, was then and there given and did have ample opportunity for ascertaining for himself and those whom he represented the fact of said incompetency. Upon information and belief petitioner further alleges that said David Withington, as such attorney and representative, was fully aware of said

mental incompetency of said Eliza R. P. Christian at the time of the happening of all of the events which there transpired as herein described.

XIII.

Plaintiff alleges upon information and belief that the said David Withington, acting for respondent corporation as aforesaid, did then and there represent to Lawrence Kentwell as well as to said incompetent, Eliza R. P. Christian, who was, however, incapable of understanding said representation, that the interest of said Eliza R. P. Christian was of a value of not more than $30,000.00, although in truth and in fact the value of said interest was in an amount of many times that sum, and did persuade and induce said Lawrence Kentwell to assist in procuring the signature of said incompetent to a deed purporting to convey the interest of said incompetent to the respondent James L. Holt as aforesaid, and did succeed in procuring the signature of said incompetent to said deed, said signature being [360] affixed by said incompetent without any knowledge or understanding of the meaning of said document or of said signature; and that in said manner, although petitioner was wholly incompetent as aforesaid, her signature was procured to said document, and that said document was signed by no person for or on her behalf as her guardian or otherwise, all of which was well known to defendant corporation, and that said document was signed on, to-wit, May 2, 1910, in the manner aforesaid by said in-

competent and by said Annie Holt Kentwell, purporting to convey her interest in the said land, and by John Dominis Holt, notwithstanding that all of his interest had theretofore been alienated and assigned away; that said document was subsequently returned to Hawaii and was recorded in the Office of the Registrar of Conveyances on, to-wit, the 23rd day of June, 1910, in Liber 337, page 75, of the records of said office, and that a true and correct copy thereof is hereto annexed, by reference made a part thereof, and marked "Exhibit B."

XIV.

Petitioner alleges upon information and belief that thereafter the said respondent corporation, through its agents and representatives, did represent to the respondent James L. Holt that it had disbursed in procuring the execution to said James L. Holt of the conveyance hereinabove referred to and marked "Exhibit B", annexed hereto, through the said David Withington in England, the following sums of money, pursuant to the agreement theretofore entered into with said respondent [361] James L. Holt by W. R. Castle as trustee as hereinabove set forth, that is to say:

Stated to have been paid to Eliza R. P. Christian £6,141/5 at $4.88½	$30,000.00
Stated to have been paid to Annie Holt Kentwell £1,023/10/10 at $4.88½	5,000.00
Stated to have been paid by David L. Withington for various incidental expenses £19/15 at $4.88½	92.92
Stated to have been paid by David L. Withington for other incidentals, including present to clerk	17.50
Total	$35,110.32

That petitioner is without information as to the manner of payment of said sum of $30,000.00 stated to have been paid to said Eliza R. P. Christian as aforesaid, or as to what person said moneys were paid, or as to how said moneys were used and applied, save and except that petitioner alleges that said money could not have been paid to and disposed of by said Eliza R. P. Christian, personally, inasmuch as she was wholly and utterly unable, because of her mental condition, to receive, handle or dispose of moneys, and petitioner further alleges that said sum of $30,000.00 was grossly, utterly and wholly inadequate as consideration for the interest of said Eliza R. P. Christian, as was well known to said respondent corporation and to its agents and representatives, and that said transaction was un-

conscionable and inequitable and in fraud of the rights of said incompetent, Eliza R. P. [362] Christian.

XV.

Petitioner alleges upon information and belief that promptly after the return of said deed of May 2, 1910 to Honolulu, and in fact even before said deed had been recorded, and pursuant to the agreement theretofore entered into as aforesaid, said respondent James L. Holt, on to-wit, May 28, 1910, did execute his deed to W. R. Castle as agent and trustee for respondent corporation, purporting to convey, among other things, the one-third interest in said lands of the said incompetent, Eliza R. P. Christian, but that upon the making of said conveyance the said James L. Holt received no money or consideration of any kind for the transfer to said W. R. Castle as trustee of said interest of the said incompetent, Eliza R. P. Christian, theretofore paid for by said respondent corporation as aforesaid, and was paid compensation only for the conveyance of his own interest in said land, also covered by said indenture of May 28, 1910, and for his services in the premises as aforesaid, for which interest and for which services said James L. Holt was paid the sum of $60,000.00, the balance of the consideration of $120,000.00 recited in said conveyance of May 28, 1910, representing sums alleged to have been disbursed in England in procuring the said indenture of May 2, 1910, and moneys paid to one John F. Colburn appearing as a party to said inden-

ture of May 28, 1910; and that said deed of May 28, 1910 is hereto annexed, by reference made a part hereof, and marked "Exhibit C". [363]

XVI.

That thereafter and for a period of approximately ten years and until May 17, 1920, as petitioner is informed and believes, the said William R. Castle, attorney for said respondent corporation as aforesaid, did continue to hold in trust as aforesaid for said respondent corporation, all rights covered by said deed of May 2, 1910, being Exhibit B, attached hereto; that at the expiration of said period and on said May 17, 1920, said William R. Castle, trustee as aforesaid, did convey said rights to certain persons as trustees in the premises, as your petitioner is informed and believe and therefore alleges the fact to be, with the knowledge of and at the instigation and request of his beneficiary, said respondent corporation, all as more fully hereinafter set forth.

XVII.

That on May 17, 1920, W. R. Castle, trustee as aforesaid, did convey, among other things, all the rights covered by said conveyance marked "Exhibit B" attached hereto, and all rights covered by Exhibit C attached hereto, to J. R. Galt, A. L. Castle, T. H. Petrie, R. A. Cooke and R. B. Anderson, as trustees designated and named trustees of the "Helemano Real Estate Trust"; and petitioner alleges upon information and belief that notwithstanding that the sum of $127,912.49 was recited in

said conveyance as consideration therefor, $120,000.00 thereof represented and was merely the $120,000.00 theretofore claimed to have been paid for said [364] lands ten years earlier, and recited as consideration in that certain conveyance to W. R. Castle, trustee, hereinabove referred to as "Exhibit C", and that the additional amount of upwards of $7,900.00 represented additional expenses incurred in the premises by the respondent corporation through its representatives, and that no new or independent consideration was furnished by any person or corporation other than respondent corporation, and that said trustees of the said Helemano Real Estate Trust as above mentioned, did thereafter and at all times hold such properties and rights as were conveyed by said indenture of May 17, 1920, in trust for said Waialua Agricultural Company, Limited, respondent herein, as ultimate beneficiary, and that a copy of said indenture of May 17, 1920, conveying said properties and rights to said trustees of said Helemano Real Estate Trust in trust as aforesaid, is hereto attached, by reference made a part hereof, and marked "Exhibit D".

XVIII.

That thereafter said trustees of said Helemano Real Estate Trust continued to hold said properties in trust as aforesaid until July of the year 1921; that on July 9, 1921, the provisions of Section 55 of the Organic Act providing for the government of the Territory of Hawaii theretofore providing, among other things, that no corporation should acquire or hold real estate in Hawaii in excess of

1,000 acres in area, and that all real estate so acquired or held should escheat to the United States, was amended by the Congress of [365] the United States by repealing and deleting from said Section said provisions thereof, and that immediately thereafter and on July 20, 1921, by instrument in writing of that date, the said trustees of said Helemano Trust did convey all of the aforesaid properties directly to respondent corporation, Waialua Agricultural Company, Limited; and petitioner alleges upon information and belief that, notwithstanding that said conveyance of July 20, 1921 recites a consideration of $128,045.49, said sum represented merely moneys theretofore expended by said corporation as hereinabove indicated for said property, with the small additional expenditure indicated, accruing as incidental to the final conveyance to the ultimate beneficiary, respondent corporation, for whom said properties had been held throughout under various trusts as hereinabove set forth, and petitioner alleges that said respondent corporation took and received said property with full and complete knowledge of all the matters and things hereinabove set forth, and that the dealings with said property herein indicated to have taken place after the procuring of the deed of May 2, 1910 hereinabove referred to as "Exhibit B", were dealings carried through at the instigation, request and under the direction of respondent corporation, by whose agents and representatives and at whose expense said original conveyance of May 2, 1910 had been procured.

XIX.

Petitioner alleges that on April 10, 1922 John Dominis [366] Holt, father of petitioner and the holder of the life interest intervening prior to the vesting of the rights of said petitioner in the lands referred to, died, leaving as his sole surviving heir the said petitioner, Eliza R. P. Christian, and that from and after said day said Eliza R. P. Christian became and was as such heir vested with an estate in fee simple in and to an undivided one-third of all the lands hereinabove described, and all rights of respondent corporation acquired by leases or by other forms of assignment of the interest of the intervening life tenant terminated; but that nevertheless respondent corporation continued thereafter to use and occupy said land without right or authority in the premises, and without accounting to petitioner for the reasonable worth of said right and user. That, however, at said time and at all times herein mentioned, said Eliza R. P. Christian was wholly and utterly incompetent mentally, and unable to act on her own behalf in the premises and until said George H. Holt was later appointed guardian, as herein set forth, was without any person authorized and qualified to act for her in the premises; and that said respondent corporation has, since the death of said John Dominis Holt, wrongfully and without right or justification claimed to be the owner of petitioner's property by virtue of the deed hereinabove referred to as "Exhibit B", notwithstanding the facts and circumstances inci-

dental to the procuring of said indenture, and notwithstanding the total incapacity of said [367] Eliza Christian to have entered into or bound herself by any such undertaking, and petitioner is wholly and utterly without any or adequate relief in the premises, otherwise than through the order and decree of this Court, cancelling said deed as to her and granting further relief as herein otherwise prayed for.

XX.

That since the appointment and qualification of said George H. Holt as guardian of the estate of the said Eliza R. P. Christian, an incompetent, all due diligence has been used in promptly investigating all matters and things having to do with the rights of the said incompetent, and with all due diligence a careful and searching investigation has been carried through, which has disclosed the facts and circumstances hereinabove set forth, which has occupied the time which has intervened since said appointment, and that promptly upon having completed said investigation and ascertained said facts and circumstances, said incompetent, acting through her said guardian, made due and timely demand upon the respondent corporation that it do account to the said Eliza R. P. Christian, incompetent as aforesaid, for the use of her lands since the death of the said John Dominis Holt, and that it otherwise do justice in the premises, and that upon refusal of said respondent to comply with said demand within a reasonable time, petitioner, by her said guardian, promptly filed her complaint herein. [368]

XXI.

Petitioner alleges that the value of the lawful right and interest of the said Eliza R. P. Christian in and to the lands herein referred to and now held and claimed by said respondent corporation is in an amount greatly in excess of a million dollars, and that the reasonable rental for the use and occupancy of said interest in said land during the period of approximately six years which has intervened since the death of the said John Dominis Holt, and properly payable to petitioner herein, is in an amount of many times the sum of $30,000.00, with interest since May 2, 1910; and that the properties which would be restored to petitioner under the decree prayed for herein and the moneys which would be payable to her on accounting as herein prayed for would be and are in value greatly in excess of said sum of $30,000.00 together with interest since May 2, 1910, and together with any and all moneys expended in the permanent improvement of said property since the vesting of petitioner's interest therein or for that matter since May 2, 1910; and petitioner, that justice full and complete may be done in the premises in such manner as to the court may seem just, equitable and in accord with the evidence to be adduced herein, does hereby offer to allow to respondent corporation, a credit in the amount of $30,000.00 with interest from May 2, 1910 to date, and such sum or sums, if any, as this court may find should reasonably be restored to defendant as moneys [369] expended in the permanent improvement of said properties, in the event that the

court finds from the evidence that in equity, such should be done, such credit to be allowed in the accounting for rentals herein prayed for, and/or as a charge against the properties, restoration of which to petitioner is herein prayed for, or in such other manner or to such other extent as to this Court may seem just and proper.

XXII.

Petitioner alleges that, by instrument of lease dated March 17, 1905, executed by certain persons other than the said Eliza R. P. Christian as lessors, said Waialua Agricultural Company, Limited, respondent herein, did secure a lease covering the interest of the said lessors in said premises for the term of twenty-five years at a certain rental therein specified, and that the signature of the said Eliza R. P. Christian, recited therein as one assenting to said lease, was procured to said lease, a copy of which lease is hereto annexed, made a part hereof, and marked "Exhibit F".

In this connection petitioner alleges that at the time of the affixing of her signature to said lease of March 17, 1905, as at all other times, the said Eliza R. P. Christian was wholly and utterly incompetent mentally to bind herself by executing said document, as one assenting thereby to the lease by others named as lessors of their interests in said property, and was mentally incompetent to thereby bind her- [371] self in any manner or to any extent.

Petitioner further alleges that respondent corporation, lessee named in said lease, had knowledge

and notice, either actual or constructive, of the fact of said mental incompetence at the time of the execution of said lease.

Petitioner further alleges that neither she, the said Eliza R. P. Christian, nor anyone acting on her behalf then received or has ever received any consideration whatever for the execution of said document as aforesaid, and, further, that neither she nor anyone acting on her behalf, or claiming any rights under or by virtue of her alleged assent to said lease, has ever received any rent from said respondent corporation pursuant to the provisions of said lease, or at all, and petitioner alleges that said lease has never become operative in any manner or to any extent between said Eliza R. P. Christian and said respondent corporation.

Petitioner further alleges that the binding or attempting to bind of the said Eliza R. P. Christian with respect to her interest in said properties by the terms and provisions of said lease and at the rental and for the term therein provided would have been and was a most improvident and injurious transaction from the point of view of the welfare of the said Eliza R. P. Christian and was in no sense beneficial, and, further, that she never received any benefit of any kind under or pursuant to the provisions of said lease or by reason of her alleged assent thereto.

Petitioner further alleges that said lease from its [371] inception was and at all times has been wholly and utterly inoperative, ineffective and of no bind-

ing force or effect, with respect to the rights or interests of this petitioner.

Petitioner further alleges that prior to the commencement of this litigation and the filing of petitioner's petition herein, no claim of right of any kind based on said lease with respect to said Eliza R. P. Christian or her interest in said lands was ever made by said respondent corporation, but that during the pendency of these proceedings said respondent corporation has for the first time claimed and now claims certain rights as against said Eliza R. P. Christian, claimed to have arisen from and by virtue of her signature as an assenting party affixed to said lease, and petitioner alleges that full and complete justice and equity in the premises can only be done through and by the order of this court in these proceedings cancelling and annulling said lease of March 17, 1905 as to her, the said Eliza R. P. Christian, and cancelling and annulling as to her any and all effect of her signature appearing as an assenting party thereto.

XXIII.

Petitioner alleges that the signature of the said Eliza R. P. Christian was procured to a certain instrument in writing dated August 31, 1906, purported to have been entered into between said Eliza R. P. Christian and the respondent Annie Holt Kentwell, a copy of which instrument is hereto annexed and made a part hereof, and marked [372] "Exhibit G"; and that according to the provisions of said instrument said Eliza R. P. Christian did

purport to assign to said Annie Holt Kentwell a right to rentals under that certain lease dated March 17, 1905 and above *referred, all* as appeared in said instrument. Petitioner alleges that at the time of the execution of said document of August 31, 1906, said Eliza R. P. Christian was wholly and utterly incompetent mentally to bind herself, as was then well known by said Annie Holt Kentwell, named as grantee or assignee therein.

Petitioner further alleges that no consideration of any kind was paid to said Eliza R. P. Christian or to anyone on her behalf for the execution by her of said indenture; that she received no benefit by virtue of the provisions thereof; that the provisions thereof were in no sense beneficial as to her, and that said indenture was at all times wholly and completely void and of no effect, or binding force whatever, and that said Annie Holt Kentwell, well knowing of the mental incompetence of the said Eliza R. P. Christian, well known by her to have been a congenital imbecile, has at no time claimed and now claims no rights by virtue of said indenture.

Petitioner further alleges, however, that by reason of the fact that said Annie Holt Kentwell joined in and executed that certain deed of May 2, 1910, being Exhibit B, purporting thereby to convey and transfer to James L. Holt, he taking for Waialua Agricultural Company, Limited, respondent [373] herein, all as is more fully hereinabove set forth, all of her right and interest in the lands in question, and notwithstanding that said Annie Holt

Kentwell thereby in no sense purported to convey any rights claimed by her by virtue of said assignment of August 31, 1906, and said respondent through said James L. Holt as aforesaid in no sense purported to purchase any such rights, and notwithstanding said respondent corporation purchasing through said James L. Holt as aforesaid paid no consideration whatever for any such rights supposed to come under or by virtue of said document, it having at that time paid to or for said Annie Holt Kentwell the sum only of $5,000.00 as consideration only for certain rights supposed to be held by said Annie Holt Kentwell in and to the life estate of John Dominis Holt, yet nevertheless said respondent corporation, which respondent, prior to the commencement of these proceedings never in any manner claimed any rights under or by virtue of said indenture, now claims to have acquired and to hold certain rights against petitioner Eliza R. P. Christian by virtue of said indenture, and your petitioner is wholly without adequate or complete relief in the premises otherwise than through the order and decree of this court, ordering and directing that said indenture dated August 31, 1906 be cancelled and annulled, and that adequate relief can be had by petitioner only through the cancellation of said indenture in these proceedings, in which proceedings in the granting of complete relief other instruments should [374] and must be cancelled, an accounting by respondent corporation must be ordered and taken which could not be taken in an

action at law, and other forms of equitable relief should and must be granted.

XXIV.

Petitioner alleges that after the appointment of the said George H. Holt as Guardian for said incompetent, and promptly upon ascertaining of the facts and circumstances hereinabove set forth, petitioner, acting by her said guardian, did disaffirm the said deed of May 2, 1910.

And petitioner proceeding by her guardian herein, without admitting any force or effect in said conveyance of May 2, 1910, or in said lease of March 17, 1905 above referred to, or in her assent thereto; or in said indenture dated August 31, 1906 hereinabove referred to, has disaffirmed and does hereby disaffirm said deed of May 2, 1910; and does disaffirm said lease of March 17, 1905 and her assent thereto; and does disaffirm said indenture dated August 31, 1906; and in the settlement to be had herein does tender back any and all consideration which may be shown to have been paid as consideration for said conveyance of May 2, 1910, together with interest thereon, together with moneys expended in the permanent improvements in said property in the event and to the extent that this court may find herein that repayment should be made in equity and in justice; and while alleging that no consideration of any kind was or ever has been paid to her with respect to or [375] under said lease of March 17, 1905, and that no consideration of any kind was or

has been paid as consideration for the conveyance of any right or interest of any kind in said lands by virtue of said indenture dated August 31, 1906, does nevertheless with respect to said lease and said indenture of August 31, 1906, offer to do full and complete equity in the premises, and to abide by such judgment or order as may be made by the court with respect thereto and/or upon cancellation of said instruments or either of them to repay any moneys or consideration which may be found to have been in any way paid with respect thereto, with interest thereon, in any manner and/or to any extent that may be found by this court to be just and equitable.

XXV.

That petitioner has no adequate and complete remedy at law.

WHEREFORE PETITIONER PRAYS:

1. That respondents above named and each of them be cited to appear and make answer unto petitioner's foregoing Petition in the manner and form provided by law, answer under oath being hereby expressly waived;

2. That it be ordered and decreed that respondents above named surrender up for cancellation that certain deed dated May 2, 1910, a copy of which is hereto annexed and [376] marked "Exhibit B", and that said deed be cancelled and annulled as to said Eliza R. P. Christian by order of this Court and as to her decreed to be of no further force or effect.

3. That it be ordered and decreed that respond-

ents above named surrender up for cancellation as to the said Eliza R. P. Christian, that certain indenture of lease dated March 17, 1905, a copy of which is hereto annexed and marked "Exhibit F", and that said lease be cancelled and annulled as to said Eliza R. P. Christian by order of this court, and as to her decreed to be of no force or effect.

4. That it be ordered and decreed that respondents above named surrender up for cancellation that certain indenture dated August 31, 1906, a copy of which is hereto annexed and marked "Exhibit G", and that said indenture be cancelled and annulled by order of this court and decreed to be of no force or effect.

5. That it be ordered and decreed that respondent Waialua Agricultural Company, Limited, do fully and completely account to petitioner of and concerning the reasonable and full rental of the undivided one-third interest in fee of petitioner in and to all of the lands hereinabove described, from April 10, 1922 to and including the date of judgment entered herein, together with interest thereon, and that said respondent Waialua Agricultural Company, Limted, do pay to petitioner a sum of money which shall be [377] and represent the aggregate of rentals accrued and accruing on said lands since said April 10, 1922, to and including the date of judgment entered herein, together with interest thereon from the dates upon which said rentals shall have accrued, credit to be given to said Waialua Agricultural Company, Limited, in such accounting

for such sum or sums, if any, as to this Court may seem just and proper.

6. That it be ordered and decreed that respondent Waialua Agricultural Company, Limited, make and execute a good and sufficient deed of conveyance, conveying and releasing to petitioner an undivided one-third interest in and to all of the lands hereinabove described.

7. And that the Court do grant such other and further relief as to the Court may seem just and equitable, to the end that complete justice and equity may be done in the premises, and that petitioner do have her costs of suit incurred herein.

Dated: Honolulu, T. H., May 23, 1931.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. von HOLT, (substituted for George H. Holt, Deceased),

By ULRICH & HITE,

By BARRY S. ULRICH

Her Attorneys [378]

Territory of Hawaii,
City and County of Honolulu—ss.

HERMAN V. von HOLT, being first duly sworn, on oath deposes and says: That he is the Herman V. von Holt named as guardian of Eliza R. P. Christian, an incompetent person, petitioner herein and that by him as such guardian said incompetent makes said Second Amended Petition herein; that he has read said foregoing Second Amended Peti-

tion, knows the contents thereof, and that the allegations therein contained are true, save as to those matters stated to be alleged upon information and belief, and that as to them, he believes them to be true.

HERMAN V. von HOLT
Guardian of Eliza R. P. Christian,
an incompetent person.

Subscribed and sworn to before me this 23rd day of May, A. D. 1931.

[Seal] KATHRYN R. CONNOR
Notary Public, First Judicial Circuit, Territory of Hawaii. [379]

EXHIBIT F

Stamped
$18.00

This Indenture made and executed this 17th day of March, 1905, by and between Carlos A. Long, in his capacity as administrator-de-bonis-non-with-the-Will-annexed of the Estate of Robert William Holt, Deceased, Robert L. Colburn, R. William Holt, George H. Holt, Edward S. Holt, Helen A. Holt; individually, and also in her capacity as Guardian of each and all of the minor children being by name Valentine S. Holt, Wattie E. Holt, Amelia A. Holt, Helen A. Holt, James R. Holt and Irene N. Holt: Elizabeth K. Richardson, wife of Edward Vivian Richardson, and Hawaiian Realty & Maturity Company, Limited and Hawaiian corporation, herein-

after named the Lessors, parties of the first part; and, Waialua Agricultural Company, Limited an Hawaiian corporation, party of the second part; and, John F. Colburn, James Lawrence Holt and Eliza R. P. Christian, wife of Albert Christian, parties of the third part:

Whereas, all and singular the lands hereinafter described and demised, are now held and claimed in fee simple in certain proportions by and between said parties hereto (except said James Lawrence Holt and said Eliza R. P. Christian,) as tenants in common, in fee,—But It Is Understood that nothing herein contained by way of recital of any claim or interest in said premises or any thereof, [380] shall be either herein or in any other transaction or proceeding between the parties hereto or any of them, or between any of the parties hereto and any third party or parties, construed to either limit, extend or otherwise affect the real title or interest in or to any of the lands or property herein described and demised, as now existing in or on the part of any party or parties to this Instrument; and,

Whereas, the titles of the respective parties hereto, in and to said premises have been, and are considered, solely for the purposes of this transaction, to exist in the following proportions that is to say:

(1) Of said Carlos A. Long, (herein individually referred to as said Administrator,) in his said representative capacity, two-thirds (2/3) of the whole;

N.F. ~~(2) Said John F. Colburn in his individual~~
N.F. capacity, but as Trustee for James Lawrence
N.F. Holt, and others, under the terms of a certain
N.F. Instrument, dated July 1, 1902, and recorded
N.F. in Liber 241, at pages 21 to 31 of the Ha-
N.F. waiian Registry of Deeds, as modified and
N.F. amended by an Instrument between said John
N.F. F. Colburn and said James Lawrence Holt
N.F. dated March 4, 1905, Two-thirds (2/3) of the
N.F. whole, or a right to have the same distributed
N.F. to him in fee, or otherwise, under the Will of
N.F. said Robert William Holt, according to the
N.F. construction which shall be ultimately be
N.F. ~~placed upon said Will;~~

(3) Said R. Wiliam Holt, one undivided twenty-seventh [381] portion and interest of and in that portion of said demised premises covered by Royal Patent (Grant) 973, and known as the Wahiawa Lands;

(4) Said Robert L. Colburn an undivided Two Twenty-sevenths (2/27) portion and interest of and in all of said demised lands;

(5) Said George H. Holt, an undivided One Twenty-seventh (1/27) portion and interest of and in all of said demised lands;

(6) Said Edward S. Holt, an undivided One Twenty-seventh (1/27) portion and interest of and in all of said demised lands;

(7) Said Elizabeth K. Richardson, an undivided One Twenty-seventh (1/27) portion and interest of and in all of said demised lands;

(8) Said Hawaiian Realty & Maturity Company, Limited, an undivided One Twenty-seventh (1/27) portion and interest of and in all of said demised lands;

(9) Said Waialua Agricultural Company, Limited, an undivided One Twenty-seventh (1/27) portion and interest of and in all of said lands described in Royal Patent (Grant) No. 973, and known as the Wahiawa lands, together with an undivided Two Twenty-sevenths (2/27) portion and interest of and in all and singular other, the lands herein demised:

(10) Said Helen A. Holt, individually, and in her capacity as Guardian as aforesaid, (said interests not [382] being herein segregated for the purpose of fuller description,) One undivided Twenty-seventh, of all and singular the lands herein demised;

Whereas, heretofore, to wit, prior to the 4th day of March, 1904, said R. William Holt, George H. Holt, Edward S. Holt, Elizabeth K. Richardson, Helen A. Holt, (in her individual and representative capacity as aforesaid,) Hawaiian Realty & Maturity Company, Limited, and said Lessee, together with John D. Holt to whose interests therein said Robert L. Colburn has since succeeded, and one Hannah Kaulani Holt, then the widow of Owen J. Holt, and who has since deceased owned in common certain interests in a certain lease which was, on or about the ____day of November, 1862 executed by one W. A. Aldrich, as Executor of the Last Will

and Testament of said Robert William Holt, to James Robinson Holt and Owen J. Holt aforesaid, which said interest in said lease, at the date last aforesaid, covered and affected an undivided moiety of all and singular the premises herein demised, to extend for and during the natural life of James Robinson Holt aforesaid, and,

Whereas, on said 4th day of March, 1904, in a certain action then pending in and before the District Court in and for the District of Waialua, in the Island of Oahu, wherein one, Henry Smith, Administrator-with-the-Will-annexed of said estate of Robert William Holt, was Plaintiff, and said Lessee, and others then claiming under said [383] last mentioned Lease were Defendants, a certain Judgment was rendered wherein and whereby it was adjudged and decreed that said last mentioned lease was and is forfeited; which said judgment still stands and obtains, in all its original force and effect; and

WHEREAS it has been agreed by all the parties hereto, that said Lessors shall demise, and said parties of the third part, shall assent to the demise by said Lessors of said lands to said Lessee, for the term, and upon the covenants and conditions hereinafter more particularly set forth; and that notwithstanding any and all doubts that may have heretofore prevailed among the parties hereto as to the legality, sufficiency and effect of said judgment of forfeiture as rendered as aforesaid, by said District Court in and for said District of Waialua, on said 4th day of March, 1904, said judgment and the for-

feiture thereby declared is and are, and the same is by all the parties hereto, and for all the purposes hereof, hereby recognized, acknowledged, assented to, and concurred in;

Now Therefore This Indenture Witnesseth:

That said Lessors for and in consideration of the premises, and of the rents herein reserved, and the covenants herein expressed as on the part of said Lessee to be observed and performed hath let, and they do hereby lease and demise unto said Lessee, all and singular those certain lands and premises situated in the District of Waialua, Island of Oahu, more particularly described as follows, [384] that is to say,

1: Royal Patent (Grant) 235, and Royal Patent (Grant) 238, being of lands now held by said Lessee under a Lease W. A. Co. No. 108 executed by and on behalf of the Estate or Robert William Holt, to Robert Halstead, dated January 13, 1893, and whereof said Lessee is now the Assignee, and the term whereof is still unexpired. But it is agreed between the parties hereto, that said last mentioned Lease is hereby surrendered by said Lessee, such surrender to take effect upon the First day of April, One Thousand Nine Hundred and Five; and the term hereby in and to the lands therein demised, shall then begin.

2: All and singular those Twelve (12) pieces or parcels, (be the number more or less,) of Apana 34 of Royal Patent (Grant) 4475, Land Commission Award 7713, of the Ahupuaa of Paalaa.

3: Royal Patent (Grant) 431 of the Kaheeka Tract.

4: Royal Patent (Grant) 973 known as the lands of Wahiawa.

Together with all and singular the rights, easements and appurtenances to said lands, or any thereof, legally belonging and appurtenant.

To have and to hold unto the said Lessee and its assigns, for and during the *full and* term of Twenty-five Years, (25) beginning with the First day of April, in the year A. D. One Thousand Nine Hundred and Five.

The said Lessee Yielding and Paying rent for said [385] premises in the sum of One Thousand Five Hundred Dollars, ($1500.00) for and in respect of said lands of Wahiawa covered by said Royal Patent (Grant) 973, and the further sum of Seven Thousand Five Hundred Dollars ($7500.00) for and in respect of all and singular the lands herein demised other than the lands of Wahiawa, and said Lessee further Yielding and Paying, by way of additional rent, any and all such sums as shall, for taxes and other imposts from year to year and from time to time, commencing with the levy and assessment in and for the year 1905, be levied upon, or assessed against said demised premises, or (and) any and every part and portion thereof, by any and every competent authority, whether the same be a State, or Territorial Municipal, or pertaining to or levied or assessed by any other political subdivision of this Territory, whether under the

name of a County, City, Town or any Board or other Governmental Body thereof, or of any thereof, and for whatever purpose or purposes the same or any thereof shall be levied or assessed.

And said Lessee doth hereby covenant and agree with said Lessors, and with each and all of said Lessors, that it will, and its assigns shall well and truly pay and discharge the rent herein and hereby reserved, in respect of each of said tracts, in manner and amount as the same is hereinabove assigned; and that it will make such payments only in United States Gold Coin of the present Standard of weight and fineness; and that it will divide such pay- [386] ments, and pay said rent to said Lessors respectively, and to their respective heirs, executors, administrators and assigns, in the aggregate annual sums, and in the proportion hereinafter expressed and stipulated, that is to say;

(a) To said Administrator, and to his successor and successors in said trust, if any and to his successor and successors in title, Two-thirds of the annual rental hereby reserved to-wit, the sum of Six Thousand Dollars ($6000.00).

(b) To said Robert L. Colburn, and his heirs, executors, administrators and assigns, Two Twenty-sevenths (2/27) of the rent hereby reserved, to-wit, the sum of $666.67.

(c) To R. William Holt and his heirs, executors, administrators and assigns, the sum of Fifty-five and Fifty-five Hundredth Dollars ($55.55).

(d) To said George H. Holt, and his heirs, executors, administrators and assigns, the sum of $333.33.

(e) To said Edward S. Holt and his heirs, executors, administrators and assigns, the sum of $333.33.

(f) To said Elizabeth K. Richardson, and her heirs, executors, administrators and assigns, the sum of $333.33.

(g) To said Hawaiian Realty & Maturity Company, Limited, and its assigns, the sum of $333.34.

(h) To said Helen A. Holt, individually, and in her representative capacity as aforesaid and to her heirs, executors, administrators and assigns, and successors in said Guardianship, and to said minor children respectively, [387] upon their attaining majority their personal representatives and assigns, the aggregate sum of $333.34.

Said Lessee reserving to itself, or paying to its own assigns in respect of its ownership in said premises as aforesaid, the aggregate annual sum of $611.11.

The said Lessee doth further covenant to pay said Lessors respectively, and their respective heirs, executors, administrators and assigns, the annual aggregate sums hereinabove expressed as being payable to them respectively, in equal quarterly installments, in advance, upon the first days of January, April, July and October, of each year during the

term of this Lease, and beginning with the First day of April in the year One Thousand Nine Hundred and Five.

And said Lessee doth hereby further covenant and agree to and with said Lessors, and to and with each of them, and to and with their respective successors in trust, heirs, executors, administrators, and assigns, as the case may be, that it, said Lessee at the end, or other earlier termination of the term hereby limited, will peaceably and quietly quit, yield up, and re-deliver the possession of said demised premises, together with all and singular the buildings, and improvements that shall then be upon said demised premises, to said Lessors, and their respective successors in trust, heirs and assigns: such re-delivery of possession to be made to the said parties hereby contemplated, in undivided parts or portions according to the [388] proportions hereinabove declared to pertain to them respectively, except as the same, or any part thereof, shall in the interval, be definitely partitioned between said Lessors and said Lessee as owners thereof in fee.

It is a condition of this Lease that, at any time before the determination, (either by efflux of time, Judicial decree of forfeiture, or mutual agreement of parties,) of the term hereby limited, said Lessee and its assigns shall be at liberty to deal as by general law existing at the date of this Lease permitted, with respect to fixtures and the removal thereof from said premises; Provided However, that said Lessee shall not in any event be permitted to

demolish, destroy, impair, or remove any permanent improvements of the general character of ditches, sluices, embankments, dams, runways, trestles, bridges, culverts, houses, fences, or other similar structures or excavations which shall be dug into, or built into or upon the earth, in a manner calculated and intended to be permanent, or which shall be built upon foundations or piers of cement, masonry, or other similarly durable and permanent foundations. But provided Further that nothing herein contained shall operate to prevent the Lessee from making such changes and alterations in the improvements, and in the method of development of the resources of the demised premises as it shall from time to time elect, and excepting perishable structures such as laborers houses and similar wooden buildings. [389]

And said Lessors, and said parties of the third party, do hereby covenant each for himself, herself, and itself to and with said Lessee and its assigns, that said Lessee, while paying said rent, (including taxes and other imposts,) as herein reserved at the times and in the manner herein specified for the payment of the same, and observing and performing all other, the conditions and covenants of this Lease as on its (said Lessee's) part to be observed and performed, shall peaceably and quietly hold and enjoy the use and possession of said demised premises, free from let or hindrance from any other person or persons having lawful claim or title to the same, or to any thereof. Provided How-

ever, and it is an express limitation upon this covenant, that said Lessors respectively shall be bound hereby only to the extent of their, and each of their respective shares and interests in said demised premises as hereinabove set forth; or shall hereafter be found to exist by any competent court or authority.

But if said Lessee or its assigns shall make default in the payment of said taxes or other imposts, and permit the same or any part thereof to become delinquent and to become a charge or lien upon the premises hereby demised, or any part or portion thereof; or if said Lessee or its assigns shall fail or neglect to pay to said Lessors, or to any or either of them or their respective successors in trust, heirs, executors, administrators and assigns as the case may be, the rent herein reserved and made payable [390] to said Lessors respectively, at the time or times and in manner whereon and wherein the same is hereby made payable,—and further if such failure or neglect to pay rent shall continue for and during Ten days after any installment thereof, by the terms of this Lease, shall become due and payable,—then, and in either such event, and at any time thereafter, while such or any such default shall continue, the said Lessors, and their respective successors in interest hereunder, or any one or more of such Lessors or Successors in interest, concerning whom such default shall so exist and continue, may, either in person or by authorized agent, enter upon said premises and by such entry terminate this Lease

as to the undivided part or parts, portion or portions, interest or interests which shall then belong or pertain to the person or persons concerning whom such default shall then exist, and who shall make such entry and declare such forfeiture as herein contemplated.

And, (or) any one or more of such Lessors or their successors in interest hereunder may, either with or without having first made such entry and declaration, at any time while such default shall continue with respect to such Lessor or successor in interest so acting, proceed by action at law, or otherwise, as may be at the time of such proceeding permitted by any Statute in force upon the Island of Oahu, and in any Court or Courts, and before any tribunal having jurisdiction of the cause, to avoid, terminate and have forfeited this lease, and all rights [391] of said Lessee and its assigns hereunder, in respect of the part and parts, portion or portions, interest and interests of the person and persons so acting as is in this paragraph contemplated.

And whenever and as often as any such action as is contemplated in or by the last two preceding paragraphs or either of them shall be taken, the person or persons so taking such action shall be entitled to a restitution of the possession of such undivided (or divided as the case may be) part, portion, and interest, of and in said demised premises as shall then belong and pertain to the person or persons so proceeding;—or to the

possession of which, he, she, it or they shall then be legally entitled.

And it is further understood and agreed between the parties hereto, and made a condition of this Lease, that any Declaration, or Judgment or Forfeiture of this Lease or of any interest herein or hereunder, which shall be made, decreed, or rendered, in pursuance of the three next preceding paragraphs hereof, or of any or either of said three paragraphs, shall be considered a termination of this lease, to the extent, and for the purpose of thereupon absolutely terminating the right of said Lessee to demolish, impair, or remove from said premises, any of the fixtures, including buildings, machinery, pumps, mills, and milling, and (or) pumping plant which shall then be upon said premises, the intent hereof being to expressly negative the right of said Lessee and its assigns, to [392] demolish, impair, or remove such fixtures, buildings, mills, pumps, etc., etc., from said premises during any interval that may elapse between the date of such Declaration, Decree of Judgment of Forfeiture, and the date whereon a final judgment concerning the same may or might be obtained in any Appellate Court or Courts.

It is a further condition of this Lease, that the rentals, and all and singular the different sums and installments hereinabove provided to be paid by way of rent hereunder to the respective Lessors herein, shall be payable to them and their respective successors, in interest, heirs, executors, administra-

tors and assigns, as the case may be, in the City of Honolulu, at the Office of the Lessee or of its agent from time to time, and that the ten days period of default hereinbefore provided shall not begin to run as to the several shares or interests hereinbefore provided for until demand for such share or shares of rent respectively shall have been made at said office, by the persons thereunto respectively entitled, or their respective agent, authorized in writing, or their respective attorneys.

It is a further condition of this lease that in any action which shall be brought to terminate this Lease, or declare, or have adjudged a forfeiture thereof, service of process upon the Manager of said Lessee's plantation, or upon any other person who shall for the time being, be in charge and control of the property of said Lessee, within [393] said District of Waialua shall be deemed sufficient service of process (which terms shall be construed to embrace all legal writs and documents that shall be involved) upon said Lessee, and said Lessee hereby expressly waives any statutory right or benefit that shall exist in its favor as to such service, and which shall be different from, or opposed to the condition in this paragraph expressed.

In witness whereof the said Hawaiian Realty & Maturity Company, Limited, and said Lessee have caused this Instrument to be signed by their appropriate officers, and their respective corporate seals to be hereto attached; and said Lessors other than said Hawaiian Realty & Maturity Company,

Limited, and said parties of the Third part, have hereunto set their hands and seal the day and year first herein above written.

Executed in presence of

CARLOS A. LONG,
Administrator-de-bonis-non-with-the-Will-annexed of the Estate of Robert William Holt, deceased.
ROBERT L. COLBURN.
EDWARD S. HOLT.
HELEN A. HOLT.
HELEN A. HOLT
As Guardian of Valentine S. Holt, Wattie E. Holt, Amelia A. Holt, Helen A. Holt, James R. Holt and Irene N. Holt.
ELIZABETH K. RICHARDSON
[394]
HAWAIIAN REALTY & MATURITY COMPANY, LTD.
By L. K. KENTWELL,
Its President.
[Corporate Seal] By HENRY P. KAOHI,
Its Secretary pro tem.
WAIALUA AGRICULTURAL COMPANY, LIMITED.
By G. P. CASTLE,
Its President.
[Corporate Seal] By W. A. BOWEN,
Its Treasurer.
JOHN F. COLBURN.
JAMES L. HOLT.
ELIZA R. P. CHRISTIAN.

Territory of Hawaii
Island of Oahu
First Judicial Circuit,
City of Honolulu.—ss.

On the eighteenth day of March, one thousand nine hundred and five, before me, N. Fernandez, a Notary Public in for said Territory, Island, Circuit and City, duly commissioned and sworn, personally appeared Carlos A. Long Administrator-de-bonis-non-with-the-Will-annexed of the Estate of Robert William Holt, deceased; and John F Colburn; and James Lawrence Holt; and L. K. Kentwell, President, and Henry P. Kaohi, the Secretary pro tem. of Hawaiian Realty & Maturity Company, Limited, an Hawaiian Corporation; and Eliza R. P. Christian, wife of Albert Christian, each of said persons being personally known to me, and further known to me to be the persons described in, and who executed the foregoing instrument; and they, and each of them acknowledged to me that they executed said instrument freely and voluntarily, and for the uses and purposes therein set forth. And said L. K. Kentwell, and said Henry P. Kaohi, further [395] acknowledged to me that they executed said instrument as and for the free act and deed of said Hawaiian Realty & Maturity Company, Limited. And said Eliza R. P. Christian, upon an examination by me held separate and apart from, and out of the hearing of her husband, the said Albert Christian, further acknowledged to me that

she signed and executed said instrument freely and without compulsion, fear, or constraint from her said husband.

And on the 20th day of March, one thousand nine hundred and five, at the Territory, Island, Circuit and City, aforesaid, personally appeared before me Robert L. Colburn, George P. Castle, the President, and W. A. Bowen, the Treasurer of Waialua Agricultural Company, Limited, an Hawaiian corporation, each and every of said persons being personally known to me, and further known to me as the persons described in, and who executed the foregoing instrument; and they, and each of them, acknowledged to me that they executed the said instrument freely and voluntarily and for the uses and purposes therein set forth. And said George P. Castle, and said W. A. Bowen further acknowledged to me that they executed said instrument as and for the free act and deed of said Waialua Agricultural Company, Limited.

And on the twenty-second day of March, one thousand nine hundred and five, at the Territory, Island, Circuit and City aforesaid, personally appeared before me Edward S. Holt, he being personally known to me, and further [396] known to me to be the person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the said instrument freely and voluntarily, and for the uses and purposes therein set forth.

And on the twenty-third day of March, one thousand nine hundred and five, at the Territory, Island, Circuit and City aforesaid, personally appeared before me Elizabeth K. Richardson, wife of Edward Vivian Richardson, she being personally known to me, and further known to me to be the person described in and who executed the foregoing instrument, and she acknowledged to me that she executed the said instrument freely and voluntarily, and for uses and purposes therein set forth. And said Elizabeth K. Richardson upon an examination by me held separate and apart from, and out of the hearing of her husband, the said Edward Vivian Richardson, further acknowledged to me that she signed and executed said instrument freely and without compulsion, fear or constraint from her said husband.

And on this twenty-seventh day of March, one thousand nine hundred and five, at the Territory, Island, Circuit and City aforesaid, personally appeared before me Helen A. Holt, widow, in her own behalf and as Guardian of Valentine S. Holt, Wattie E. Holt, Amelia A. Holt, Helen A. Holt, James R. Holt and Irene N. Holt, minor children of James R. Holt, the Younger, deceased, she being personally known to me, and further known to me to be the person described in and who executed the foregoing instrument, and she [397] acknowledged to me that she executed the said instrument freely and voluntarily, and for the uses and purposes therein set forth, individually and in her capacity as Guardian aforesaid.

And I do hereby further certify that the following changes and alterations were made in the Text of said instrument before the execution and acknowledgment of the same, by the parties aforesaid, that is to say:—On page two thereof, one entire paragraph consisting of the fourth line to the twelfth line of said page two inclusive, numbered from the top, was expunged and stricken out. On page eight thereof, in the fifth line from the top, the word "and" was interlined between the words "herself" and "itself."

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last in the foregoing Certificate above written.

[Seal] N. FERNANDEZ

Notary Public, First Judicial Circuit, Territory of Hawaii. [398]

Exhibit G.

Stamped $15.

THIS INDENTURE—made this 31st day of August A. D. 1906, by and betwen—ELIZA R. P. CHRISTIAN—(the only child and heir of John Dominis Holt, the elder) of Honolulu, Island and County of Oahu, Territory of Hawaii, of the first part, and—ANNIE HOLT KENTWELL—of the same place, party of the second part.

WITNESSETH—Whereas the party of the first part has for many years last past been supported and maintained at the home of the party of the

second part, and at the cost and expense of the said party of the second part, and

WHEREAS—the said first party is the only child and heir of John Dominis Holt, the elder, being also a devisee under the Will of R. W. Holt, deceased, and is entitled in expectancy to a certain undivided interest or moiety in certain lands situate at Waialua, Oahu, now leased to the Waialua Agricultural Company, Limited, by lease dated the 17th day of March, 1905, and recorded in the Hawaiian Registry of Deeds in Liber , Folio, and

WHEREAS—by virtue of being such heir of John Dominis Holt, the elder, and such devisee under the will of R. W. Holt, deceased, aforesaid, she, the said party of the first part, shall upon the death of him, the said John Dominis Holt, the elder, be entitled to her share of the [399] rents reserved in said lease aforesaid, which share of said rents aforesaid is now enjoyed by her father, the said John Dominis Holt, the elder, and

WHEREAS—the party of the second part has agreed to support and to maintain the party of the first part for and during the period of the natural life of her, the said party of the first part,

NOW THEREFORE THIS INDENTURE WITNESSETH—That the said—ELIZA R. P. CHRISTIAN—in consideration of the premises and of One Dollar to her in hand paid by—ANNIE HOLT KENTWELL—of Honolulu aforesaid, the receipt whereof is hereby duly confessed and acknowledged and for other and valuable consideration to the said—ELIZA R. P. CHRISTIAN—mov-

ing from said—ANNIE HOLT KENTWELL—, she, the said—ELIZA R. P. CHRISTIAN—, does hereby give, sell, assign, release, transfer and set over unto the said—ANNIE HOLT KENTWELL—, her heirs, executors and administrators, all her title and interest in and to any and all rents, issues and profits to which she may hereafter be entitled or which may be due and payable to her by, through or under the lease to the Waialua Agricultural Company, Limited, dated the 17th day of March, 1905, and recorded in said Liber Folio or by virtue of being the only child of John Dominis Holt, the elder, and devisee under the will of R. W. Holt, deceased, together with all and every her right to demand, receive, collect and receipt for all such rents, issues and profits from whomsoever due during the term of the natoral life of her, [400] the said—ELIZA R. P. CHRISTIAN—.

AND—it is expressly agreed and understood between and by the parties hereto that the party of the second part shall support and maintain her, the party of the first part, for and during the natural life of said first part.

AND—it is further agreed and understood by and between the parties hereto that in case the party of the first part shall survive the party of the second part, the heirs of said second party shall be entitled to perform the covenant of this agreement on the part of said second party to be kept and performed, and they shall during the life of said first party be entitled to the benefit or benefits thereof.

IN WITNESS WHEREOF—the said—ELIZA R. P. CHRISTIAN—and—ANNIE HOLT KENTWELL—have hereunto set their hands and seals the day and year first above written.

ELIZA R. P. CHRISTIAN
ANNIE HOLT KENTWELL

Executed in the presence of:
JOHN D. HOLT

Territory of Hawaii,
County of Oahu,
District of Honolulu.—ss.

On this 31st day of August, A. D. 1906, personally appeared before me—ELIZA R. P. CHRISTIAN—(w) and—ANNIE HOLT KENTWELL—(w), both known to me to be the persons [401] described in and who executed the foregoing instrument, who severally acknowledged to me that they executed the name freely and voluntarily, and for the uses and purposes therein set forth.

[Notarial Seal] N. FERNANDEZ,
Notary Public First Judicial Circuit, Territory of Hawaii. [402]

[Title of Court and Cause.]

MOTION FOR ALLOWANCE OF AMENDMENTS TO PLEADINGS.

Filed at 10:15 o'clock A. M., May 25, 1931, John Lee Kwai, Clerk. [403]

Comes now ELIZA R. P. CHRISTIAN, and incompetent person, by HERMAN V. von HOLT,

(substituted for George H. Holt, Deceased), her Guardian, by her attorneys, Ulrich & Hite, and moves that amendments to the petition in the above-entitled Court and Cause be allowed and permitted in accordance with the second amended petition attached hereto and made a part hereof.

This motion is based upon all the records and files [404] herein.

Dated: Honolulu, T. H., May 23, 1931.

ELIZA R. P. CHRISTIAN,
an incompetent person, by
HERMAN V. von HOLT (substituted for George H. Holt, Deceased), her Guardian,
Petitioner,
By ULRICH & HITE,
By CHAS M. HITE
Her Attorneys.

NOTICE.

To: Waialua Agricultural Company, Limited, James L. Holt, and Messrs. Robertson & Castle; Brobeck, Phleger & Harrison; and John R. Desha, their attorneys:

YOU AND EACH OF YOU will please take notice that the foregoing Motion will be presented before and will be heard by the Honorable ALBERT M. CRISTY, judge of the above-entitle Court, in his courtroom in the Judiciary Building, Honolulu, T. H., on Tuesday, the 26th day of May, A. D. 1931,

at the hour of 9 o'clock A. M., or as soon thereafter as counsel can be heard.

ULRICH & HITE,
By CHAS M. HITE,
Attorneys for Movants.

CERTIFICATE

I, CHAS. M. HITE, of counsel for petitioner above named, hereby CERTIFY that a true copy of the foregoing [405] Motion and Notice, together with a true copy of the Second Amended Petition referred to in said Motion, was served upon respondents WAIALUA AGRICULTURAL COMPANY, LIMITED and JAMES L. HOLT on Saturday, the 23rd day of May, 1931, at the hour of 9 o'clock a. m., by handing to their attorneys said true copies.

CHAS. M. HITE [406]

[Title of Court and Cause.]

OBJECTIONS TO ALLOWANCE OF PROPOSED SECOND AMENDED BILL.

Filed at 10:15 o'clock A. M., Oct. 31, 1931, L. R. Holt, Clerk. [407]

Now comes the respondent, WAIALUA AGRICULTURAL COMPANY, LIMITED, by its attorneys, Robertson & Castle, and objects to the allowance of the proposed second amended petition in the above entitled cause and specifies its objections as follows:

1. That said proposed amendment is contrary to the rules of law and of equity and comes too late.

2. That a new case is sought to be made by said proposed amendment.

3. That the said proposed amendment is not supported by affidavit showing any grounds for the same (a) that there is newly discovered evidence, (b) that such evidence is material, (c) that the petitioner has shown due diligence, (d) that any proposed evidence was unknown to the petitioner at the hearing of said cause; [408]

4. That no supplemental bill adding new parties, and creating new issues can be filed after an interlocutory decree except to introduce new evidence of which the petitioner was ignorant, and had shown due diligence at the time of hearing on the original bill, which evidence is material, and then only when supported by an affidavit with all such necessary allegations.

5. That the proposed amendment is barred by the laches and negligence of the petitioner; that the attention of the petitioner was repeatedly called to the fact that the lease of March 17, 1905, and the deed of August 31, 1906, barred an accounting during the original hearing; that the petitioner was aware of the existence of these instruments and introduced them in evidence; that by the first amended petition filed March 5, 1929, during the last days of the hearing on cancellation of the deed of May 2, 1910, the petitioner alleged relief could not be prayed for against said lease in these pro-

ceedings, which this respondent admitted and the deed of August 31, 1906, was not mentioned in said amended petition; that the respondent has been greatly injured by said delay in the loss of evidence, especially by the death of W. W. Goodale, Manager of the respondent's plantation, and who negotiated said lease of March 17, 1905, for the respondent;

6. That the petitioner does not offer to do equity and cannot do equity in the proposed amended complaint;

7. That the proposed second amended petition does not comply with the facts as found by the Supreme Court;

8. That the petitioner was given an election to amend the complaint by the Supreme Court and while exercising such election still is seeking to preserve the question of error in the Supreme Court decree on its decision on accounting; [409] that the petitioner should either exercise his election or allow a decree to be entered on the findings of the Supreme Court and appeal therefrom.

9. That the petitioner while accepting the decree of the Supreme Court cancelling the deed of May 2, 1910, which cancellation was based on an adjudication that the deed of August 31, 1906 was a valid instrument, now is seeking to set aside said deed of August 31, 1906, and is thereby occupying an inconsistent position in the same suit.

These objections are based upon all the pleadings, records and evidence in the above entitled cause and

the affidavit hereto attached marked "Exhibit A" and made a part hereof.

DATED, Honolulu, T. H., Oct. 30, 1931.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
By ROBERTSON & CASTLE,
Its Attorneys. [410]

EXHIBIT A.

Territory of Hawaii
City and County of Honolulu.—ss.

ALFRED L. CASTLE being first duly sworn on oath deposes and says: That he is a member of the firm of Robertson & Castle, counsel for the respondent Waialua Agricultural Company, Limited; that W. W. Goodale referred to in the within objections died in April, 1929.

ALFRED L. CASTLE

Subscribed and sworn to before me this 30th day of October, 1931.

[Seal] ELSIE HIORTH,
Notary Public, First Judicial Circuit Territory of Hawaii. [411]

[Title of Court and Cause.]

SPECIAL DEMURRER TO SECOND AMENDED PETITION.

Filed at 9:30 o'clock A. M., Nov. 14, 1931, D. K. Sherwood, Clerk. [412]

The respondent, Waialua Agricultural Company, Limited, by its attorneys, Robertson & Castle, by protestation, not confessing or acknowledging all or any of the matters and things in said petitioner's second amended petition, and saving and reserving unto itself all benefits and advantages of further demurrer, plea or answer to the residue of said second amended petition, and without waiving its objections or its exceptions heretofore filed to said second amended petition, does demur to so much and such part of the said second amended petition as is hereinafter set forth, and for the reasons and grounds as are hereinafter more specifically set forth:

1. That the allegation in Paragraph IX, beginning line four of page seven of the second amended petition "that all of the foregoing facts and circumstances were well known to [413] respondent corporation, notwithstanding that the true worth and value of said property, dependent peculiarly within the knowledge of said respondent corporation was unknown to and not disclosed to said Lawrence Kentwell" is scandalous and impertinent and ought to be expunged.

2. That the allegation in Paragraph X, line nineteen of page seven of said second amended peti-

tion beginning "the said James L. Holt was induced" to the end of the paragraph, being line five of page nine of said second amended petition, is impertinent and ought to be expunged.

3. That the allegation in Paragraph XI, line seven of page nine of said second amended petition, beginning "then and thereupon said James L. Holt, pursuant to said agreement, did endeavor to ascertain from England whether or not, if attempted, said plan might be reasonably expected to be successful and having, as it was thought, ascertained that such was the fact," is impertinent and ought to be expunged.

4. That the allegation in Paragraph XI, beginning line sixteen, page nine of said second amended petition "and there to appear" to the end of said paragraph, line twenty-two and page nine of said second amended petition, is impertinent and scandalous and ought to be expunged.

5. That the allegation in Paragraph XII, line three of page ten of said second amended petition, being "though ostensibly representing said respondent James L. Holt as aforesaid," is impertinent and ought to be expunged.

6. That the allegation in Paragraph XII, line seven, page ten, of said second amended petition, being "Upon information and belief petitioner further alleges that said David L. Withington, as such attorney and representative, was fully aware of said mental [414] incompetency of said Eliza R. P. Christian at the time of the happening of all the events which there transpired as herein described,"

is scandalous and impertinent and ought to be expunged.

7. That the allegation in Paragraph XIII, line fourteen of page ten of said second amended petition, beginning with the words "that the said David L. Withington" and ending with the words "well known to defendant corporation" in said paragraph, being line seven of page eleven of said second amended petition, is scandalous and impertinent, and ought to be expunged.

8. That the allegation in Paragraph XIV, line twenty-two of page twelve, of said second amended petition beginning with the words "petitioner alleges that said sum of $30,000 was grossly, utterly and wholly inadequate as consideration for the interest of said Eliza R. P. Christian as was well known to said respondent corporation and to its agents and representatives and that said transaction was unconscionable and inequitable and in fraud of the rights of said incompetent Eliza R. P. Christian," is scandalous and impertinent and ought to be expunged.

9. That all the allegations in Paragraph XVIII beginning line twenty on page fifteen of said second amended petition with the words "that on July 9, 1921," to the end of the clause, line two page sixteen of said second amended petition and ending with the words "said provision thereof" are impertinent and scandalous and ought to be expunged.

10. That all allegations in Paragraph XXII from line nine on page twenty of said second

amended petition to line twenty on page twenty-two of said second amended petition are impertinent [415] and ought to be expunged.

11. That all the allegation in Paragraph XXIII from line twenty-one on page twenty-two of said second amended petition to line four on page twenty-five of said second amended petition, are impertinent and ought to be expunged.

12. That the allegations in Paragraph XXIV, line eleven on page twenty-five of said second amended petition, beginning with the words "or in said lease of March 17, 1905," and ending with the words "August 31, 1906" in line seventeen of said page twenty-five, are impertinent and ought to be expunged.

13. That the allegations in Paragraph XXIV, line twenty-four on page twenty-five of said second amended petition, beginning with the words "and while alleging that no consideration of any kind" and ending on line six on page twenty-six of said second amended petition with the words "August 31, 1906," are impertinent and ought to be expunged.

14. That the praying in said second amended petition for relief against a lease of March 17, 1905, "Exhibit F," and an indenture of August 31, 1906, "Exhibit G," are impertinent and said prayer and said exhibits ought to be expunged.

15. That that portion of the second amended petition seeking relief against the lease of March 17, 1905, is barred by laches and acquiescence of the petitioner and the trustee of the R. W. Holt estate to the injury of this respondent.

16. That that portion of the second amended petition seeking relief against the lease of March 17, 1905, shows a non-joinder of necessary parties to-wit: the lessors named in said lease and the successors in trust to Carlos A. Long, Trustee of the Estate of R. W. Holt.

17. That the portion of the second amended petition seeking relief against the lease of March 17, 1905, and the deed of [416] August 31, 1906, shows that these matters were known to the petitioner at the time of the hearing on the original complaint and this court has no jurisdiction to grant such relief.

18. That the second amended petition shows the petitioner is guilty of laches and acquiescence to the injury of the respondent sufficient to bar the cancellation of the deed of August 31, 1906.

19. That the petitioner is asserting an inconsistent claim in the second amended petition in that the Supreme Court ordered cancellation of the deed of May 2, 1910, on the ground that the deed of August 31, 1906 was a valid instrument and now the petitioner is seeking to annul said deed of August 31, 1906, while claiming the benefit of the interlocutory decree of the Supreme Court as against the deed of May 2, 1910, and the petitioner is estopped to assert said claim that the deed of August 31, 1906 is void.

20. That the second amended petition seeking supplemental relief is not supported by any affidavit of the petitioner or anyone for the petitioner show-

ing that the petitioner has exercised due diligence or that the supplemental relief is based on newly discovered evidence or any other equitable grounds.

21. That the second amended petition seeks additional and supplemental relief which creates a new and different case from that of the original petition in that there is sought a cancellation of the lease of March 17, 1905, and the deed of August 31, 1906, when those instruments have been adjudicated valid instruments in the main case, and the evidence upon which such cancellation is sought is not shown to have been newly discovered or that the petitioner has exercised due diligence in presenting the same. [417]

22. That the second amended petition insofar as it seeks additional relief from the original bill sets forth no grounds for such relief either equitable or otherwise.

23. That this respondent cannot in equity and good conscience be compelled to answer said second amended petition until the costs incurred in the trial of this case in the above entitled court be taxed in its favor and paid by petitioner.

WHEREFORE and for divers other errors and imperfections appearing in said second amended petition, this respondent humbly prays the judgment of this honorable Court whether it shall be compelled to make any answer to such parts of said second amended petition as is so demurred unto as aforesaid, and this respondent humbly prays to be hence dismissed as to such part of said second

amended petition with its costs in this behalf wrongfully sustained.

Dated, Honolulu, T. H., November 14, 1931.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
By ROBERTSON & CASTLE
Its Attorneys.

I hereby certify that the foregoing special demurrer is not intended for delay.

ALFRED L. CASTLE
Counsel for the Respondent, Waialua Agricultural Company, Limited.

Service of a copy of the foregoing Special Demurrer to Second Amended Petition is hereby acknowledged this 14th day of November, 1931.

ULRICH & HITE
Attorneys for Petitioner.
JOHN R. DESHA
Attorney for James L. Holt, one of the Respondents. [418]

[Title of Court and Cause.]

ANSWER OF JAMES L. HOLT.

Filed at 11:00 o'clock A. M., Dec. 5, 1931, John Lee Kwai, Clerk. [486]

Comes now JAMES L. HOLT, respondent above named, by his attorney JOHN R. DESHA, and, for

answer to the second amended petition on file herein, shows unto this Honorable Court as follows:

I.

With reference to all those allegations in said second amended petition which are the same allegations as those contained in the original petition in the above entitled cause, as amended by the first amended petition herein, respondent shows to the Court the fact that on or about May 18, 1928, he did file in the above entitled cause, his answer, duly signed and sworn to, on the said 18th day of May, 1928, wherein and whereby he did make answer to the allegations of the original petition herein, and did thereafter permit said answer to stand as his answer to the first amended petition herein, and that thereafter and upon the issues raised by the allegations of said original petition herein and the first amended petition herein, together with his answer thereto as aforesaid, and the other pleadings in said cause, evidence was adduced bearing upon the issues raised as aforesaid and said matter did proceed to final judgment and decree in the above entitled Court, and that thereafter on appeal duly taken to the Supreme Court of the Territory of Hawaii by the repondent, Waialua Agricultural Company, [487] Limited, the issues raised by said first amended petition and by your respondent's answer thereto and by the other pleadings in said cause dealing with the question of the validity as to petitioner of that certain deed of May 2, 1910, and with the question of the mental capacity at all times of

the said Eliza R. P. Christian were finally determined by the decision of the said Supreme Court of the Territory of Hawaii, and your respondent, abiding by the said decision of the Supreme Court of the Territory of Hawaii in the premises, makes no further or other answer to the matters already answered as aforesaid, and in this connection refers merely to the answer heretofore filed by him herein as aforesaid, but with respect to the allegations in said second amended petition which are different from the allegations of said original petition, as amended by said first amended petition, as aforesaid, and which have been included as amendatory matter authorized by the order of the Supreme Court of the Territory of Hawaii heretofore made and entered herein, and which have to do with the question of the validity as to petitioner of a lease dated March 17, 1905, and a written instrument dated August 31, 1906, your respondent makes answer as follows:

II.

Answering the allegations contained in Paragraph XXII of said second amended petition, referring to a certain instrument of lease dated March 17, 1905, and to the procuring of the signature of the said Eliza R. P. Christian as an assenting party to said lease, under certain circumstances in said paragraph enumerated, your respondent alleges that he has no knowledge of the matters and things therein alleged sufficient upon which to base a belief, excepting the allegation as to the mental incompetence of the said

Eliza R. P. Christian at that time, and therefore that as to all allegations in said paragraph contained excepting said allegation as to mental incompetence, he leaves petitioner to her proof thereof, but that as to said allegation of mental incompetence, [488] he knows that said Eliza R. P. Christian was at all times wholly and utterly mentally incompetent, and that she was so mentally incompetent on said date of March 17, 1905, in said paragraph referred to, and he therefore admits the allegation in said paragraph contained as to the mental incompetence of the said Eliza R. P. Christian.

III.

Answering the allegations contained in Paragraph XXIII of said second amended petition, having to do with a certain instrument in writing dated August 31, 1906, purported to have been entered into and executed between said Eliza R. P. Christian and Annie Holt Kentwell, your respondent alleges that he has no information of any kind of and concerning said written instrument or of its purported execution, and that he has no knowledge or information sufficient upon which to predicate a belief of and concerning the allegations in said paragraph contained, save and except the allegation therein contained as to the mental incompetence at that time of Eliza R. P. Christian, and the allegation as to the payment of $5,000.00 for the interest claimed by Annie Holt Kentwell in the life estate of John Dominis Holt at the time of the joinder by her in that certain deed dated May 2, 1910, and that he

therefore leaves petitioner to her proof of all the allegations in said paragraph contained, save and except the allegation as to the mental incompetence of the said Eliza R. P. Christian, and said allegation as to the payment of said $5,000.00 as aforesaid, and that with respect to said allegation as to mental incompetence, he admits the truth of such allegation in said paragraph contained, and avers that the said Eliza R. P. Christian, to his knowledge, at that time, as at all other times in her life, was and has been wholly and utterly incompetent mentally, and that as to the allegation in said paragraph contained to the effect that the $5,000.00 claimed to have been paid with respect to the joinder in the deed of May 2, 1910, of Annie Holt Kentwell, was paid only as consideration for certain rights claimed and supposed to be held by said Annie Holt Kentwell in and to the life estate of John Dominis Holt, your respondent [489] knows said allegation to be true, and therefore admits the allegation in this regard in said paragraph XXIII contained.

IV.

Your respondent having heretofore, in his original answer filed herein to the original petition as amended by the first amended petition herein, submitted himself to the jurisdiction of this Court as to all matters and issues thereby raised and presented, now likewise with respect to the second amended petition herein, insofar as it presents new or other or amendatory issues, upon such said second amended petition, and his answer thereto herein-

above set forth, and upon such evidence as has been adduced or may yet be adduced upon further hearing hereof, submits himself to the jurisdiction of this Honorable Court and to such decree or judgment as may seem just and equitable in the premises.

Dated at Honolulu, T. H., this 5th day of December, A. D. 1931.

JAMES L. HOLT

Respondent.

Territory of Hawaii
City and County of Honolulu.—ss.

JAMES L. HOLT, being first duly sworn, on oath deposes and says: That he is the James L. Holt described in and who signed the foregoing answer; that he has read the said answer, knows the contents thereof, and that the allegations therein contained are true, save and except as to those matters stated to be alleged upon information and belief, and as to them, he believes them to be true.

JAMES L. HOLT

Subscribed and sworn to before me this 5th day of December, A. D. 1931.

[Seal] CHANG CHAU
Notary Public, First Judicial Circuit, Territory of Hawaii. [490]

[Title of Court and Cause.]

REPLICATION.

Filed at 2:10 o'clock P. M., Dec. 7, 1931, John Lee Kwai, Clerk. [491]

Comes now Eliza R. P. CHRISTIAN, an incompetent person, by HERMAN V. von HOLT, her Guardian, and, by way of replication to the answer of James L. Holt to the second amended petition, re-asserts, re-alleges and re-avers all of the matters and things set forth and contained in said second amended petition.

Dated: Honolulu, T. H., December 7, 1931.

ELIZA R. P. CHRISTIAN, an incompetent person,

Petitioner.

By HERMAN V. von HOLT

Her Guardian.

Served on Respondent James L. Holt, Dec. 7, 1931 by mailing his attorney, J. R. Desha, true copy hereof.

CHAS. M. HITE [492]

[Title of Court and Cause.]

NOTICE TO PRODUCE

Filed at 1:50 o'clock P. M., Dec. 8, 1931. D. K. Sherwood, Clerk.

Receipt of a copy acknowledged this 8th day of December, 1931.

ULRICH & HITE
Attorneys for Petitioner. [493]

To: HERMAN V. VON HOLT, Guardian of ELIZA R. P. CHRISTIAN, Petitioner herein, and ULRICH & HITE, his attorneys:

Demand and notice is hereby made on you to produce at the trial in the above entitled cause the original deed from Eliza R. P. Christian to Annie H. Kentwell, dated August 31, 1906, recorded in the Hawaiian Registry of Conveyances in Book 294, pages 211-213;

AND you are hereby notified that upon your failure to so produce, the respondent, Waialua Agricultural Company, Limited, in said cause will prove the said deed and its contents by other methods.

Dated, Honolulu, T. H., December 8th, 1931.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
By ROBERTSON & CASTLE
Its Attorneys [494]

[Title of Court and Cause.]

ANSWER OF WAIALUA AGRICULTURAL COMPANY, LIMITED, TO SECOND AMENDED PETITION.

Filed at 3:58 o'clock P. M., Dec. 24, 1931. D. K. Sherwood, Clerk. [500]

Now comes WAIALUA AGRICULTURAL COMPANY, LIMITED, one of the respondents herein, now and at all times saving and reserving unto itself all benefit and advantage of exceptions which can or may be had or taken to it, any errors, uncertainties and other imperfections in the second amended petition of Eliza R. P. Christian, an alleged incompetent person, suing by Herman V. von Holt (substituted for George H. Holt, deceased), her alleged guardian, and for answer to the three separate causes of action set forth in said second amended petition (the first of which cause of action, relating to a deed of May 2, 1910, is set forth in paragraphs I to XXI, inclusive, thereof, and the first [501] sentence of paragraph XXIV thereof, the second of which causes of action, relating to a lease of March 17, 1905, is set forth in paragraph XXII and part of XXIV thereof, and the third of which, relating to a deed of August 31, 1906, is set forth in paragraph XXIII and part of paragraph XXIV thereof) denies each and every allegation of said second amended petition, excepting as hereinafter admitted, qualified or explained, and for specific answer does hereby admit, deny and allege as follows, that is to say:

ANSWER TO FIRST CAUSE OF ACTION

For answer to the first cause of action set forth in the second amended petition herein, as set forth in Paragraphs I to XXI inclusive thereof, Paragraph XXV and the first sentence of Paragraph XXIV thereof, relating to the deed of May 2, 1910, this respondent admits, denies and alleges as follows:

FOR A FIRST DEFENSE.

1.

It denies the allegations of Paragraph I.

2.

It admits the allegations of Paragraphs II, III, IV, V and VI, except that the land described includes only a portion of Ahupuaa of Paalaa, being a portion of Apana 34, L. C. A. 7713, R. P. 4475 containing 12,018.44 acres, and a portion of Grant 973 which contains 1902 acres instead of 1942 acres as alleged, and respondent denies that all kuleanas within the demised lands were demised by the will of Robert William Holt.

3.

It denies the allegations of Paragraph VII, and further answering thereunto, says that said Eliza R. P. Christian, [502] during all the transactions referred to in said second amended petition, was legally competent to look after her own interests and to make conveyances of her property with full knowledge of the purpose and effect thereof.

4.

It denies the allegations of Paragraph VIII, except as expressly admitted, but admits that for several years prior to 1910, it used and occupied large portions of the lands described in the petition as tenant of persons holding the legal estate in trust and with the assent of the beneficiaries of the said trust and as owner of certain undivided interests in said lands; that on a considerable portion of said lands it planted and grew sugar cane in the course of its business and sublet other portions for the growth and cultivation of pineapples; and more particularly alleges that on or about March 17, 1905, a lease of said lands was executed by this respondent as lessee and by certain lessors including the petitioner Eliza R. P. Christian, and that a copy of said lease is attached to the second amended petition herein and marked "Exhibit F" and is hereby expressly referred to and made a part hereof; thereupon and on or about April 1, 1905, the respondent entered into the possession of all of said lands and at all times subsequent to April 1, 1905, mentioned in said Paragraph VIII of said petition the respondent was in possession of all of said lands as lessee under said lease and as owner of said undivided interest in said lands.

5.

In answer to Paragraph IX, it denies the allegations thereof except as expressly admitted, but admits that said Eliza R. P. Christian had lived in the house of said Annie Holt Kentwell for many years; that at said time respondent James L.

Holt [503] was a resident of Honolulu, Hawaii, and was on friendly terms and had been in correspondence with said Lawrence Kentwell and said Eliza R. P. Christian; that the said Eliza R. P. Christian was the only child and sole heir in expectancy of her father, John Dominis Holt, and that said John Dominis Holt was a man approximately seventy-one years of age, and alleges that, as the Supreme Court of Hawaii in an interlocutory decision entered herein on April 18, 1931, found, the market value of the one-third contingent interest of said Eliza R. P. Christian in said lands, as of the 2nd day of May, 1910, was not more than the sum of $30,000.

6.

It denies all of the allegations of Paragraph X, but admits and alleges that in the purchase of said Eliza R. P. Christian's interest it was represented by the law firm of Castle & Withington of Honolulu; that it, through its agent, entered into an arrangement with said James L. Holt, at his suggestion and at his request, for the acquiring of a two-thirds interest in said lands, both in praesenti and in expectancy, including the share and expectancy of said Eliza R. P. Christian, and the interest owned by said James L. Holt, and understood that said James L. Holt would, and did in order to convey such interest, secure the conveyance of the interest of said Eliza R. P. Christian and of said Annie Holt Kentwell to him, so that said interest might be united with those which he had acquired from his

father, J. R. Holt, his uncle John Dominis Holt, and his brother, Robert Holt, which latter interests were then held in trust for said James L. Holt by one John F. Colburn, together with the said James L. Holt's own interest; that the fact that the said James L. Holt was [50] dealing with the respondent Waialua Agricultrual Company, Limited, through its agents, was well known to said Eliza R. P. Christian, said Annie Holt Kentwell, said John Dominis Holt, and said Lawrence Kentwell, and the fact that said James L. Holt could not hope to purchase the interests of said Eliza R. P. Christian and said Annie Holt Kentwell except upon the advancing of moneys by said Waialua Agricultural Company, Limited, was perfectly understood by said Eliza R. P. Christian, said Annie Holt Kentwell, said Lawrence Kentwell and said John Dominis Holt, and fully approved by them.

7.

In answer to Paragraph XI, it denies the allegations thereof, but says that David L. Withington did proceed to England to secure the conveyance of the interests of said Eliza R. P. Christian and said Annie Holt Kentwell, and did represent the respondent Waialua Agricultural Company, Limited, as well as said James L. Holt, and further says that when said David L. Withington went to England all terms of the agreement to convey said property and/or interests had been settled and understood by the parties to said conveyance and that it was well understood by all parties thereto

that said David L. Withington represented both the respondent Waialua Agricultural Company, Limited, and said James L. Holt.

8.

In answer to Paragraph XII, it denies all the allegations thereof, except that it says that said David L. Withington did go to England and did meet said Annie Holt Kentwell, together with the other members of her household, including said Eliza R. P. Christian and said John Dominis Holt; [505] that said David L. Withington did have opportunity to observe and did observe the mental condition of said Eliza R. P. Christian and was convinced and knew that she was legally capable of handling her business affairs and of making conveyances, including the conveyance in this proceeding, with full knowledge of their purpose and effect. Respondent further alleges that in all of the acts and transactions referred to in the petition, said David L. Withington acted fairly and honestly and made no misrepresentations or untrue or unfair statements whatever and concealed none of the facts with respect to said transactions. Respondent further alleges that, as the Supreme Court of Hawaii found in its said interlocutory decision, neither this respondent nor said David L. Withington had any notice or knowledge whatever of the alleged incompetence of said Eliza R. P. Christian.

9.

In answer to Paragraph XIII, it denies each and every allegation thereof except as herein expressly

admitted; that it says that the deed, a copy of which is attached to the second amended petition herein and marked Exhibit "B", and made a part hereof, was duly and knowingly executed by all the parties to the same with full knowledge of the facts for an adequate consideration; that all said parties were competent to contract or to convey land and/or interests therein, and that said deed having been duly executed and acknowledged was duly recorded in the Hawaiian Registry of Conveyances as set forth in said petition.

10.

In answer to Paragraph XIV, it denies each and every of the allegations thereof, save and except that it [506] admits that it rendered an account to said James L. Holt, paid to Eliza R. P. Christian the sum of $30,000.00 on behalf of said James L. Holt, paid to Annie Holt Kentwell the sum of $5,000.00 on behalf of said James L. Holt, and expended the sum of $110.32 in miscellaneous expenses. It further alleges that, as said Supreme Court found in said interlocutory decision, the market value of the one-third contingent interest of said Eliza R. P. Christian in said lands was, on the 2nd day of May, 1910, not more than the sum of $30,000.00.

11.

In answer to Paragraph XV, it denies the allegations thereof and alleges the facts to be that in conformity with the agreement theretofore reached between the parties and the respondent, Waialua Agricultural Company, Limited, through its agents,

said respondent, through its agents, paid the sum of $120,000.00 for a two-thirds undivided interest in fee in said lands, including the one-third interest of James L. Holt, the life estate of John Dominis Holt, the contingent interest of Eliza R. P. Christian, the contingent interest of Robert Holt, the interest of John F. Colburn and the interest of Annie Holt Kentwell.

12.

In answer to Paragraph XVI, it admits that said William R. Castle did continue to hold in trust for the respondent Waialua Agricultural Company, Limited, all the rights covered by said deed of May 2, 1910, and that on May 17, 1920, said rights were conveyed to others with the knowledge of said Waialua Agricultural Company, Limited, but not at its instigation and request. [507]

13.

In answer to Paragraph XVII, it denies the allegations therein contained, except that it admits the execution of the deed dated May 17, 1920, and alleges that the consideration therein mentioned was actually paid for in cash by the beneficiaries of said Helemano Real Estate Trust and said interests were actually owned by said beneficiaries.

14.

In answer to Paragraph XVIII, it denies the allegations thereof, except that it admits that on July 20, 1921, by instrument in writing the Trustees of said Helemano Real Estate Trust did convey the

properties mentioned in said instrument directly to the respondent Waialua Agricultural Company, Limited, on the payment td said Trustees for the beneficiaries of said trust and in proportion to their respective interests of the full consideration mentioned in said instrument.

15.

It denies all the allegations in Paragraph XIX, except that John Dominis Holt died on April 10, 1922, and left as his sole surviving heir said Eliza R. P. Christian; it admits that since the death of said John Dominis Holt it has claimed, and now is the owner of, the property described in the second amended petition herein by virtue of the deeds referred to in said second amended petition as Exhibits B, C, D and E, but denies that such claim and ownership is wrongful or without right.

16.

It denies the allegations of Paragraph XX and alleges that on the 2nd day of May, 1910, the petitioner, Eliza R. P. Christian was living with her cousin Annie Holt Kentwell, [508] her cousin's husband, Lawrence Kentwell, and her father, John Dominis Holt, all of whom joined with her in the execution of said deed of May 2, 1910; that said Eliza R. P. Christian continued, except for temporary absences, to live with her said cousin, Annie Kentwell, and her said father until the time of his death, as aforesaid, and has continued, except for temporary absences, to live with Annie Holt Kent-

well until the present time; that on or about March 25, 1924, said Annie Holt Kentwell, purporting to act on behalf of said petitioner, employed the present attorneys of record for petitioner herein for the purpose of investigating the claims of the petitioner to these lands, as well as other claims of the petitioner; that said attorneys thereupon immediately proceeded to and did investigate said claims and on September 14, 1925, said attorneys stated in writing that they were ready for court action on behalf on said petitioner with respect to the claim of said petitioner to the lands described in the petition herein; that on or about the 22nd day of June, 1926, in further pursuance of the action theretofore taken by said Annie Holt Kentwell and said attorneys, the said Annie Holt Kentwell was appointed receiver for said petitioner Eliza R. P. Christian under the terms of the British Lunacy Act; that on February 1, 1927, said George Holt was appointed guardian of said petitioner Eliza R. P. Christian by the Circuit Court of the First Circuit, Territory of Hawaii, and that no notice of the claim asserted in this suit, or of any claim of the invalidity of said deed of May 2, 1910, on the ground of the alleged mental incompetence of said petitioner or on any ground whatever, was ever given this respondent until April 5, 1928, immediately prior to the filing of the original petition in this suit; that between the time of the execution of said deed of May [509] 2, 1910, and the time when such notice was first given on April 5, 1928, this respondent be-

lieved the said deed to be in all respects valid and binding and, in reliance thereon and in good faith, and without any notice or knowledge of any claim that said deed was defective because of the alleged incompetence of petitioner or on any other ground, did during said period of time, expend $424,637.00 for permanent improvements upon said lands, which have enhanced the value of said land in at least that sum, and that the value of said improvements to said lands is at the present time at least the said sum of $424,637.00; that of said sum of $424,637.00 so expended for permanent improvements as aforesaid, the sum of $350,000.00 was spent after the death of John Dominis Holt on April 10, 1922, in the belief that it had become the owner in fee simple absolute of said one-third interest in said lands.

17.

It denies the allegations of Paragraph XXI and alleges that expenditures have been made by it for improvements in the amounts and under the circumstances alleged in the next preceding paragraph of this answer.

18.

It denies the alleations contained in the first sentence of Paragraph XXIV of the second amended petition and in this respect alleges that neither the said George H. Holt, as guardian of the petitioner, nor any other person on behalf of said petitioner ever disaffirmed or attempted to disaffirm or gave any notice of disaffirmance of said deed of May 2, 1910. [510] at any time prior to April 5, 1928,

immediately prior to the filing of the original petition in this suit.

19.

It denies the allegations contained in Paragraph XXV of the second amended petition.

FOR A SECOND DEFENSE to the first cause of action contained in the second amended petition, this respondent alleges that on or about March 17, 1905, a certain lease was executed by and between his respondent as lessee and certain lessors, including the petitioner Eliza R. P. Christian, a copy of which lease is attached to the second amended petition herein and marked Exhibit "F" and which is hereby expressly referred to and made a part hereof; that on or about April 1, 1905, this respondent entered into possession of said lands as lessee under said lease and as owner of certain undivided interests in said lands and has ever since remained in possession of said lands; that the existence of said lease and of the term for years thereby created constitutes and is a bar to any recovery herein based upon any claim to the possession of said lands or to any rents, issues or profits therefrom at any time prior to April 1, 1930. Respondent further alleges that an August 31, 1906, the petitioner herein made, executed and delivered to Annie Holt Kentwell named as a respondent herein, a certain deed and assignment of rents, issues and profits, wherein and whereby the said petitioner conveyed to said Annie Holt Kentwell all of the rents, issues and profits to which she might thereafter be entitled or which

might be due and payable to her by, through or under the said lease of March 17, 1905, or by virtue of being the only child of John Dominis Holt, the elder, and devisee under the will of R. W. Holt, deceased, together with all and every her right to take, [511] receive, collect and receipt for all such rents, issues and profits, from whomsoever due, during the term of her natural life, and whereby also the said petitioner conveyed to the said Annie Holt Kentwell an estate in said lands for and during the term of the natural life of said petitioner; that a full, true and correct copy of said deed and assignment is attached to the second amended petition herein, marked Exhibit "G", and is hereby expressly referred to and made a part hereof; that thereafter and on May 2, 1910, said Annie Holt Kentwell conveyed to James L. Holt all of her interest, whether present, prospective or in remainder, vested or contingent, of every name and description, in and to said lands, including the said rents, issues and profits of the life estate acquired from said petitioner by Annie Holt Kentwell under said deed and assignment of August 31, 1906; that thereafter the said rents, issues, profits and life estate so acquired from said petitioner by Annie Holt Kentwell passed by mesne conveyances to this respondent, which thereby acquired all of said rents, issues, profits and life estate for valuable consideration and without any notice whatever of any alleged mental impairment or incompetency of the said petitioner; and that by reason of the transfers aforesaid this

respondent is the owner of all the said rents, issues, profits and life estate which passed from the petitioner to Annie Holt Kentwell by said deed and assignment of August 31, 1906, and that such transfers and conveyances as aforesaid constitute a bar to any right of possession to said lands or to the rents, issues and profits thereof, on the part of said petitioner or any person claiming under her at any time during her natural life and constitute also a release and bar to any claim to rentals under the lease aforesaid of March 17, 1905. [512]

FOR A THIRD AND SEPARATE DEFENSE to the first cause of action contained in the said second amended petition, this respondent alleges that the claim of said petitioner is barred by her laches and unreasonable delay in the prosecution of said claim and in this respect the respondent realleges all of the facts set forth in Paragraph 16 of this answer to the first cause of action, and in addition alleges that during the interval between the execution of said deed of May 2, 1910, and the first assertion of the petitioner's claim on April 5, 1928, this respondent has at all times believed that said deed of May 2, 1910, was in all respects valid and binding and, in reliance thereon, has expended large sums for permanent improvements, as hereinbefore more particularly alleged; that many of the witnesses who had personal knowledge of the circumstances surrounding the execution of said deed have died and that by reason of their death this respondent is unable to prove the facts with respect to such

circumstances, and with respect to the mental capacity of the petitioner at the time of the execution of said deed; that during said inerval of time many items of documentary evidence affecting the execution of said deed have been lost or destroyed; that during said interval of time said lands have increased enormously in value; and that by reason of such unreasonable delay and lapse of time and the risks undertaken, expenditures made, and evidence lost, this respondent has been grievously prejudiced and injured by the failure of the petitioner or anyone on her behalf to assert her said claim more seasonable.

FOR A FOURTH AND SEPARATE DEFENSE, this respondent alleges that any decree for the cancellation of said deed [513] of May 2, 1910, would result in an inequitable forfeiture of property of this respondent of great value and that such cancellation and the forfeiture resulting thereform would constitute and be an inequitable unconscionable penalty wholly disproportionate to the property interest conveyed by petitioner under said deed.

FOR A FIFTH AND SEPARATE DEFENSE, this respondent alleges that it will be impossible, upon a cancellation of said deed of May 2, 1910, to restore the status quo existing immediately prior to its execution.

ANSWER TO SECOND CAUSE OF ACTION

And for answer to the new and separate and second cause of action set forth in the second amended

petition herein, in paragraphs XXII and part of XXIV thereof, relating to a lease of March 17, 1905, this respondent does hereby admit, deny and allege as follows:

FOR A FIRST DEFENSE

this respondent alleges that this cause came regularly on for hearing upon the first amended petition herein before the Circuit Court of the First Judicial Circuit, Territory of Hawaii; that in and by said first amended petition all the matters and things referred to in the second cause of action contained in the second amended petition herein were expressly excluded from consideration therein; that thereafter and on October 16, 1929, the said Circuit Court duly made its decree upon said first amended petition; that thereafter an appeal was taken to the Supreme [514] Court of the Territory of Hawaii, which court, on April 18, 1931, duly rendered its decision and thereafter and on May 21, 1931, made its interlocutory order herein, and that thereafter and on May 23, 1931, the petitioner filed her second amended petition herein, whereby, for the first time, she asserted the said second cause of action; that none of the facts stated in the second cause of action were newly discovered, but that on the contrary the petitioner and her guardian and attorneys had, at the time of the filing of the original petition herein, or could have had with reasonable diligence at the time, all the knowledge with respect to the allegations contained in said second cause of action that they now have; that said second cause of ac-

tion is not separately stated in said second amended petition; that said second cause of action constitutes extraneous matter wholly foreign to the subject matter of the original petition herein and the first amended petition herein, and constitutes an attempt to institute for the first time, as part of these proceedings, a claim and cause of action separate and distinct from that originally asserted and litigated herein, which separate and distinct claim the petitioner is not entitled to have considered in these proceedings.

FOR A SECOND DEFENSE,

this respondent admits, denies and alleges as follows:

It denies the allegations contained in paragraph XXII of the second amended petition, except as expressly admitted; admits that an instrument of lease dated March 17, 1905, a copy of which is attached to the second amended petition and marked Exhibit "F" thereto, was executed by Eliza R. P. [515] Christian and certain other persons as lessors and that this respondent did thereby secure a lease covering the interest of the said lessors in the premises therein described for a term of twenty-five years at the rental therein specified, and admits and alleges that the said petitioner Eliza R. P. Christian did sign the said lease. This respondent denies that at the time of affixing her signature to said lease of March 17, 1905, or at any other time, the said Eliza R. P. Christian was wholly or utterly

or at all incompetent, mentally or otherwise, to bind herself by executing said document, as one assenting thereby or otherwise, or was mentally or otherwise incompetent to bind herself in any manner or to any extent, and in this respect this respondent alleges that at the time of affixing her signature to said lease of March 17, 1905, and at all other times, said Eliza R. P. Chritsian was entirely competent, mentally and otherwise, to bind herself by executing said document or by any other legal act. This respondent denies that it had any knowledge or notice, either actual or constructive, of any mental incompetency of said Eliza R. P. Christian, if any such mental incompetence existed, at the time of the execution of said lease, and in this respect this respondent alleges that, as heretofore found by the supreme Court of Hawaii, it never had any knowledge or notice or suspicion of any incompetence or mental infirmity whatever of said Eliza R. P. Christian. This respondent denies that said Eliza R. P. Christian has not received any consideration for the execution of said lease dated March 17, 1905, and in this respect alleges that said Eliza R. P. Christian received the following considerations, among others, for her execution of said lease: (1) the covenants and promises of this respondent [516] therein contained; (2) the joinder in the execution thereof by the other parties thereto, thereby assuring unified possession and control of the permises by a solvent lessee, interested in developing and improving petitioner's property, for a period of twenty-five years;

(3) the undertaking of this respondent to pay rent for said premises during said period of twenty-five years to the persons who would be entitled from time to time during said term to the reversion thereunder, and the payment by the lessee therein named of the taxes on said premises; (4) the actual and the extensive improvement of said premises by this respondent as such lessee, inuring to the benefit of all persons interested in the title thereto, whether as reversioners, contingent remaindermen or vested remaindermen, with all the benefits flowing from such improvements. This respondent denies that no one acting on behalf of the petitioner, or claiming any rights under or by virtue of her alleged assent to said lease, has ever received any rent pursuant to the provisions of said lease, and in this respect this respondent alleges that the petitioner transferred all of her rights to said rents to one Annie Holt Kentwell by the indenture, hereinafter referred to, of August 31, 1906, and that said Annie Holt Kentwell transferred all of her interest in said premises, including all her rights to said lands, and the rents, issues and profits thereof, to the original grantor of this respondent by the deed of said Annie Holt Kentwell, dated May 2, 1910, and that the said rights thereafter passed to this respondent by mesne conveyances, and that this respondent is now the owner and holder thereof, and alleges that all rental due or payable under said lease has been duly paid to the person or persons entitled thereto.

This respondent denies that said lease has never [517] become operative in any manner or to any

extent between the petitioner and this respondent; and in this respect alleges that, as found by said Supreme Court in said interlocutory opinion, said lease became operative between said petitioner and this respondent and binding on said respondent at the time of its execution on or about March 17, 1905. This respondent denies that the binding of said Eliza R. P. Christian wtih respect to her interest in said lands by the terms and provisions of said lease was an improvident or injurious transaction, from the point of view of the welfare of said petitioner or from any point of view whatever, or was in any sense other than beneficial, and in this respect alleges that the execution of said lease and the binding of said Eliza R. P. Christian with respect to her interest in said lands by reason of her execution thereof was beneficial in all respects to said Eliza R. P. Christian; that said lease was entered into not only by the said petitioner but also by other persons as lessors, whose interest in the said properties was of the same character as hers and who agreed to the same terms and conditions after protracted consideration and negotiations; that at the time of the execution of said lease the said lands had been running to waste for a period of many years prior thereto and were covered with rocks, lantana, guava bushes and klu and that the only practical method whereby the said properties could have been prudently operated and made to yield a reasonable income was by the joinder, on the part of all persons having an interest therein, in a lease to a solvent lessee, as was actually done; that the taxes on said lands, at the date of

said lease were delinquent and unpaid for a period of four years preceding said lease; and that the terms [518] and provisions of said lease and the rental thereby reserved were, as of the date of the execution of said lease, in all respects adequate and reasonable and constituted a beneficial and prudent transaction from the point of view of the said Eliza R. P. Christian and of all the other persons having an interest in said lands. This respondent denies that said lease was at any time wholly or at all inoperative or ineffective or lacking in binding force or effect, with respect to the rights or interests of the petitioner, and in this respect alleges that, as found by the Supreme Court of Hawaii in its interlocutory decision herein, the said lease was in all respects operative and binding upon the petitioner with respect to her interest in said lands.

With respect to the allegation contained in paragraph XXII, relating to the time when this respondent first asserted a right to the possession of said premises as against the petitioner by reason of her execution of said lease, this respondent alleges that it has always claimed that said lease of March 17, 1905 was in all respects valid and binding and that, as held by the Supreme Court of the Territory of Hawaii by its decision herein, this respondent had and has a perfect right, in the event that the said deed of May 2, 1910, is set aside, to claim that its possession was justified by said lease.

This respondent denies the following allegation contained in Paragraph XXII of the second amended petition:

"Petitioner alleges that, full and complete justice and equity in the premises can only be done through and by the order of this court in these proceedings in cancelling and annulling said lease of March 17, 1905, as to her, the said Eliza R. P. Christian, and cancelling and annulling as to her any and all affects of her signature appearing as an assenting party thereto."

and in this respect alleges that neither justice nor equity [519] requires the cancellation of said lease as to said petitioner or otherwise.

FOR A THIRD AND SEPARATE DEFENSE to the second cause of action contained in the second amended petition, this respondent alleges that at the time of the execution of said lease of March 17, 1905, and at all other times, the said respondent had no notice or knowledge, actual or constructive, of any incompetence or mental impairment of said Eliza R. P. Christian, and that it took the said lease in good faith and for valuable consideration.

FOR A FOURTH AND SEPARATE DEFENSE to the second cause of action set forth in the second amended petition, this respondent alleges that the said lease of March 17, 1905, was beneficial and advantageous to the petitioner Eliza R. P. Christian.

FOR A FIFTH AND SEPARATE DEFENSE to the second cause of action set forth in the

second amended petition, this respondent alleges that the petitioner Eliza R. P. Christian actually received the benefit of said lease of March 17, 1905.

FOR A SIXTH AND SEPARATE DEFENSE

to the second cause of action set forth in the second amended petition, this respondent alleges that it is impossible to restore the status quo existing prior to the execution of said lease of March 17, 1905; that said lease has been fully executed; that the term of said lease has fully expired; that this respondent would not [520] have made the said lease if all of the other executing parties thereto, including the said petitioner, had not joined therein, and that after the execution of said lease and during the term thereof this respondent constructed valuable and permanent improvements upon said premises.

FOR A SEVENTH AND SEPARATE DEFENSE

to the second cause of action set forth in the second amended petition, this respondent alleges that the claim of said petitioner, with respect to said lease of March 17, 1905, is barred by her laches and unreasonable delay in the prosecution of said claim and in seeking to set aside or cancel the said lease; that said lease was executed as aforesaid on March 17, 1905, but that no proceeding was ever brought, nor were any steps ever taken, to cancel or disaffirm said lease, or to assert any claim with respect thereto, until the filing of the second amended petition herein on May 23, 1931, over

twenty-six years after the execution of said lease and over one year after the expiration of the term thereof; that the petitioner was living with her cousin Annie Holt Kentwell, her cousin's husband, Lawrence Kentwell, and her father John Dominis Holt at the time of the execution of said lease on or about March 17, 1905; that said petitioner continued, except for temporary absences, to live with her said cousin Annie Holt Kentwell and her said father until the time of his death as aforesaid and has continued, except for temporary absences, to live with Annie Holt Kentwell until the present time; that on or about March 25, 1924, said Annie Holt Kentwell, purporting to act on behalf of said petitioner, employed the present attorneys of record for petitioner herein for the purpose of investigating the claims of the petitioner to said lands, as well as other [521] claims of the petitioner; that said attorneys thereupon immediately proceeded to and did investigate said claims and on September 14, 1925, said attorneys stated in writing that they were ready for court action on behalf of said petitioner with respect to the claim of said petitioner to the lands described in the petition herein; that on or about the 22nd day of June, 1926, in further pursuance of the action theretofore taken by said Annie Holt Kentwell and said attorneys, the said Annie Holt Kentwell was appointed receiver for said petitioner Eliza R. P. Christian under the terms of the British Lunacy Act; That on February 1, 1927, said George Holt was appointed guardian

of said petitioner Eliza R. P. Christian by the Circuit Court of the First Circuit, Territory of Hawaii; that said George H. Holt, as such guardian of the petitioner, has had ever since his appointment on February 1, 1927, the power to lease the property of the petitioner; that for over two years after his appointment the said guardian allowed the respondent to continue to make, and the respondent did make, expenditures for permanent improvements upon the said property so leased and that during all of such time said guardian made no effort to disaffirm the said lease or to notify the respondent with respect to any claim to said lands; that during the interval between the execution of said lease of March 17, 1905, and the expiration of the term of said lease on April 1, 1930, (all before the first assertion of any claim of a right to rescind the said lease, now made for the first time by said second amended petition), this respondent expended large sums for permanent improvements upon said lands amounting to more than the sum of $600,000; that said improvements have enhanced the value of said lands in at least the said sum of $600,000 and that the value of [522] said improvements to said lands is at the present time more than the said sum of $600,000; that during the period between the execution of said lease and the filing of the second amended petition herein said lands have increased tremendously in value; that many of the witnesses who were familiar with the circumstances surrounding the execution of said lease and the participation

therein of the petitioner and her representatives and the mental condition of the petitioner at the time of the execution of said lease and other facts bearing upon the right of the petitioner to obtain such cancellation, have died or become unable to testify; that of said witnesses, W. W. Goodale and W. A. Greenwell have died since the filing of the first amended petition herein; that by reason of the aforesaid facts and circumstances and the long and unreasonable delay which has occurred before petitioner attempted to disaffirm or have cancelled the said lease, the second cause of action is barred.

FOR AN EIGHTH AND SEPARATE DEFENSE

to the second cause of action set forth in the second amended petition, this respondent alleges that the parties to this action did, prior to the filing of said second amended petition enter into a stipulation to the effect that relief could not be had in these proceedings with respect to the said lease; that said stipulation was relied upon by this respondent and in reliance thereon this respondent failed to take the testimony of witnesses who have since died, to-wit, the said W. W. Goodale and W. A. Greenwell. That said stipulation has not been and cannot equitably be set aside and constitutes a bar to the present claim of the petitioner for cancellation of said lease. [523]

FOR A NINTH AND SEPARATE DEFENSE to the second cause of action set forth in the second amended petition, this respondent alleges that the petitioner Eliza R. P. Christian has not, and never has had at any time since August 31, 1906, any interest in the rents, issues or profits of said lands, or the possession or reversion thereof or any interest whatever in having cancelled the said lease; that on August 31, 1906, the said petitioner, by deed and assignment executed on that date, transferred by Annie Holt Kentwell all of the rents, issues and profits to which she might thereafter be entitled or which might be due and payable to her by, through or under the said lease of March 17, 1905, or by virtue of being the only child of John Dominis Holt, the elder, and devisee under the will of R. W. Holt, deceased, together with all and every her right to take, receive, collect and receipt for all such rents, issues and profits, from whomsoever due, during the term of her natural life and whereby also she conveyed to the said Annie Holt Kentwell an estate in said lands for and during the term of the natural life of said petitioner, as more fully appears by said Exhibit "G" attached to said amended petition; that thereafter the interest acquired by said Annie Holt Kentwell under said deed and assignment of August 31, 1906, passed by mesne conveyances to this respondent, as hereinbefore more particularly alleged and that this respondent is now the owner of all of said rents, issues, profits and life estate which passed from the

petitioner to Annie Holt Kentwell by said deed and assignment of August 31, 1906, and that said deed and assignment constitute a bar to the maintenance of any claim or suit by the said petitioner to set aside or disaffirm [524] or cancel the said lease of March 17, 1905; and that this respondent alleges that she, the said petitioner by virtue of said deed and assignment of August 31, 1906, has actually received her support and maintenance from the time of the execution of said instrument until the expiration of said lease on April 1, 1930.

FOR A TENTH AND SEPARATE DEFENSE to the second cause of action set forth in the second amended petition, this respondent alleges that there is a defect of a necessary party in that Carlos A. Long is a necessary party hereto and is not joined herein. [525]

ANSWER TO THIRD CAUSE OF ACTION.

And for answer to the new and separate and third cause of action set forth in the second amended petition herein in Paragraphs XXIII and part of XXIV thereof, relating to the deed and assignment of August 31, 1906, this respondent admits, denies and alleges as follows:

FOR A FIRST DEFENSE,

this respondent alleges that this cause came regularly on for hearing upon the first amended petition herein before the Circuit Court of the First Judicial Circuit, Territory of Hawaii; that none of the

matters or things referred to in the third cause of action contained in the second amended petition herein were mentioned or referred to at all in either the original or first amended petition, nor were said matters or things made an issue between the parties upon either the original or first amended petition herein; that thereafter and on October 16, 1929, the said Circuit Court duly made its decree upon said first amended petition; that thereafter an appeal was taken to the Supreme Court of the Territory of Hawaii, which court, on April 18, 1931, duly rendered its decision and thereafter and on May 21, 1931, made its interlocutory order herein, and thereafter and on May 23, 1931, the petitioner filed her second amended petition herein, whereby, for the first time, she asserted the said third cause of action; that none of the facts stated in the third cause of action were newly discovered, but that on the contrary the petitioner and her guardian and attorneys had, at the time of the filing of the original petition herein, or could have had with reasonable diligence at that time, all the knowledge with respect to the allegations contained in said third cause of action that they now have; that said third cause of action is not separately stated [526] in said second amended petition; that said third cause of action constitutes extraneous matter wholly foreign to the subject matter of the original petition herein and the first amended petition herein and constitutes an attempt to institute for the first time, as part of these proceedings, a claim and cause of

action separate and distinct from that originally asserted and litigated herein which separate and distinct claim the petitioner is not entitled to have considered in these proceedings.

FOR A SECOND DEFENSE,

this respondent admits, denies and alleges as follows:

It denies the allegations contained in Paragraph XXIII of the second amended petition, except as expressly admitted; admits that a certain instrument in writing, dated August 31, 1906, a copy of which is attached to the second amended petition and marked Exhibit "G" thereto and which is hereby expressly referred to and made a part hereof, was executed by said Eliza R. P. Christian and respondent Annie Holt Kentwell, and in this respect alleges that said instrument dated August 31, 1906, constituted and was a conveyance and assignment whereby the said petitioner Eliza R. P. Christian conveyed to the said Annie Holt Kentwell all of the rents, issues and profits to which she might thereafter be entitled or which might be due and payable to her by, through or under the said lease of March 17, 1905, or by virtue of being the only child of John Dominis Holt, the elder, and devisee under the will of R. W. Holt, deceased, together with all and every her right to take, receive, collect and receipt during the term of her natural life and whereby also the [527] said petitioner conveyed to the said Annie Holt Kentwell an estate in said lands for and during the term of the natural life of said petitioner; that thereafter and on May 2, 1910, said

Annie Holt Kentwell conveyed to James L. Holt all of her interest, whether present, prospective or in remainder, vested or contingent, of every name and description, in and to said lands, including the said rents, issues and profits of the life estate acquired from said petitioner by Annie Holt Kentwell; and that thereafter the said interests and said rents, issues and profits passed by mesne conveyances to this respondent, which thereby acquired, and is now the owner of, all of said rents, issues, profits and life estate.

This respondent denies that at the time of the execution of said document on August 31, 1906, or at any other time, the said Eliza R. P. Christian was wholly or utterly or at all incompetent, mentally or otherwise, to bind herself in any manner or to any extent, and in this respect this respondent alleges that at the time of executing the said instrument of August 31, 1906, and at all other times the said Eliza R. P. Christian was entirely competent, mentally and otherwise, to bind herself by executing said instrument or by any other legal act. This respondent denies that Annie Holt Kentwell, named as grantee and assignee in said instrument of August 31, 1906, had any knowledge or notice, either actual or constructive, of any alleged mental incompetence or impairment of said Eliza R. P. Christian at the time of the execution of said instrument or at any other time. This respondent denies that no consideration was paid to said Eliza R. P. Christian or to anyone on her behalf for the execution by her

of said indenture or instrument dated August [528] 31, 1906, and in this respect alleges that said Eliza R. P. Christian received as consideration for her execution of said instrument dated August 31, 1906, first, the undertaking and promise of said Annie Holt Kentwell to support and maintain the said Eliza R. P. Christian for and during the natural life of said Eliza R. P. Christian, and, second, the actual support and maintenance of said Eliza R. P. Christian from the time of the execution of said instrument until the present time. This respondent denies that the petitioner Eliza R. P. Christian received no benefit by virtue of the provisions of said instrument dated August 31, 1906, and in this respect alleges that she, the said petitioner, Eliza R. P. Christian, has actually received, by virtue of the provisions of said instrument, her support and maintenance from the time of the execution thereof until the present time, as well as the promise and undertaking of said Annie Holt Kentwell to maintain her, the said Eliza R. P. Christian, for the whole of her natural life. This respondent denies that the provisions of said instrument dated August 31, 1906, were not beneficial as to said petitioner and in this respect alleges that said provisions were highly beneficial to said petitioner and that, as found by the Supreme Court of Hawaii in its said interlocutory decision, the said petitioner had secured by said instrument of August 31, 1906, the undertaking of said Annie Holt Kentwell to support

her, the said petitioner, during her life; that at the time of the execution of said instrument the petitioner was living apart from her husband and had no means of support and no property other than a contingent interest in said lands which might never have vested and which did not in [529] fact vest until sixteen years thereafter; that said instrument assured her of support of life upon her transfer of a life estate in said contingent interest, without affecting the right of her heirs or devisees to succeed thereto upon her death, and that said instrument was one which provided her with the necessities of life. This respondent denies that said indenture or instrument dated August 31, 1906, was at any time wholly or completely or at all void or of no effect or binding force and in this respect alleges that said indenture or instrument dated August 31, 1906, was at all times and now is wholly and completely valid and effective and of binding force. This respondent denies that said Annie Holt Kentwell ever knew of the alleged incompetency of Eliza R. P. Christian or ever knew that she was or had been an alleged congenital imbecile or imbecile at all, and denies that said Annie Holt Kentwell has not claimed nor does not claim rights by virtue of said indenture or instrument, and in this respect alleges that said Annie Holt Kentwell did claim the rights acquired by her under said indenture or instrument as aforesaid at all times until she conveyed such rights as aforesaid on May 2, 1910.

This respondent admits and alleges that said Annie Holt Kentwell joined in and executed that certain deed of May 2, 1910, being Exhibit "B" to the second amended petition herein, and thereby conveyed and transferred to James L. Holt all of her right and interest in the lands in question, including all of the said rents, issues, profits and life estate. This respondent denies that said Annie Holt Kentwell thereby in no sense purported to convey, or that said Annie Holt Kentwell failed in any respect to convey, [530] the rights claimed by her and actually acquired by her by virtue of said instrument of August 31, 1906, and in this respect alleges that said Annie Holt Kentwell did in fact convey all of the rights acquired by her by virtue of said instrument, including the said rents, issues, profits and life estate. This respondent denies that it in no sense purported to purchase or in any respect failed to purchase, through James L. Holt and its other mesne grantors, any of such rights, and in this respect alleges that through said James L. Holt and its other mesne grantors it did purchase all of the rights acquired by said Annie Holt Kentwell under said instrument of August 31, 1906, including all of said rents, issues, profits and life estate. This respondent denies that it paid no consideration for such rights, coming under and by virtue of said instrument, being the said rents, issues, profits and life estate, and in this respect alleges that it paid to Annie Holt Kentwell, on behalf of said James L. Holt, the sum of $5,000.00 as consideration for the said rights, including all of said rents, issues, profits and life estate, as well as for any other rights which

the said Annie Holt Kentwell might have in the said lands, and in this respect this respondent alleges that the said instrument of August 31, 1906, appeared of record at the time said $5,000.00 was paid, and was known to the persons investigating the title to said lands for this respondent at that time, and that the said sum of $5,000.00 would not have been paid to said Annie Holt Kentwell by this respondent for said James L. Holt if she had not conveyed to said James L. Holt all of her right, title and interest in and to said property, including the rights acquired by [531] her under said instrument of August 31, 1906, being the said rents issues, profits and life estate. This respondent denies that it did not, prior to the commencement of these proceedings, claim any rights under or by virtue of said indenture and in this respect alleges that it has always claimed and does now claim that it has acquired by mesne conveyances and is now the owner of, all of the rights of said Annie Holt Kentwell under and by virtue of said indenture or instrument, including the rents, issues, profits and life estate. This respondent denies that the petitioner is without adequate or complete relief otherwise than through an order directing that said indenture or instrument dated August 31, 1906, be cancelled or annulled or that adequate relief can be had by petitioner only through the cancellation of said indenture or instrument in these proceedings, or that any other instrument or instruments whatever should or must

be cancelled, in the granting of complete relief or otherwise, or that any accounting by this respondent must or should be ordered or taken or that any form of equitable relief should or must be granted, and in this respect alleges that the petitioner is not entitled to any relief by way of cancellation, accounting or otherwise with respect to said indenture or instrument of August 31, 1906, or to any relief whatever.

FOR A THIRD AND SEPARATE DEFENSE to the third cause of action contained in the second amended petition, this respondent alleges that at the time of the execution of said instrument of August 31, 1906, and at the time of its acquisition by mesne conveyance of the rights and interest thereby granted, and at all other times, the said respondent [532] had no notice or knowledge, actual or constructive, of any alleged incompetence or mental impairment of said Eliza R. P. Christian and that it took the rights granted by said instrument, including the said rents, issues, profits and life estate, in good faith and for valuable consideration as a subsequent purchaser and not as a party to said instrument of August 31, 1906.

FOR A FOURTH AND SEPARATE DEFENSE to the third cause of action set forth in the second amended petition, this respondent alleges that said instrument of August 31, 1906, was beneficial and advantageous to the petitioner, Eliza R. P. Christian, as found by the Supreme Court of Hawaii in its said interlocutory decision.

FOR A FIFTH AND SEPARATE DEFENSE to the third cause of action set forth in the second amended petition, this respondent alleges that the petitioner Eliza R. P. Christian has actually received up to the present time the benefit of said instrument of August 31, 1906, in that she has received support and maintenance from the time of its execution until the present time and has also received the undertaking and promise of said Annie Holt Kentwell to support and maintain her during the whole of her natural life.

FOR A SIXTH AND SEPARATE DEFENSE to the third cause of action set forth in the second amended petition, this respondent alleges that it is impossible to restore the status quo existing prior to the execution of the same instrument dated August 31, 1906; that the covenant therein contained, with respect to the support and maintenance of [533] the petitioner, has been performed from the time of the execution of said instrument until the present time; that the rights and estate thereby granted to Annie Holt Kentwell have been conveyed by said Annie Holt Kentwell by mesne conveyances to this respondent; that this respondent would not have acquired the title to said lands, nor would it have paid the sum of $5,000.00 on behalf of James L. Holt, as aforesaid, nor would it have purchased from James L. Holt, if it had not believed and known that the said Annie Holt Kentwell was conveying all of said rights and estate by said deed of

May 2, 1910, and that after the acquisition of title to said lands, including said rights acquired by Annie Holt Kentwell and her said instrument of August 31, 1906, and by her transferred by mesne conveyances to this respondent, this respondent constructed valuable and permanent improvements upon said premises.

FOR A SEVENTH AND SEPARATE DEFENSE to the third cause of action set forth in the second amended petition, this respondent alleges that the said claim of said petitioner with respect to the said instrument of August 31, 1906, is barred by her laches and unreasonable delay in the prosecution of said claim and in seeking to set aside or cancel the said instrument; that said instrument was executed as aforesaid, on August 31, 1906, but that no proceeding was ever brought, nor were any steps ever taken, to cancel or disaffirm said instrument, or to assert any claim with respect thereto, until the filing of the second amended petition herein on May 23, 1931, nearly twenty-five years after the execution of said instrument; that the petitioner was living with her cousin Annie Holt Kentwell, [534] her cousin's husband, Lawrence Kentwell, and her father John Dominis Holt, at the time of the execution of said instrument on or about August 31, 1906; that said petitioner continued, except for temporary absences, to live with her said cousin Annie Holt Kentwell and her said father until the time of his death as aforesaid and has continued, except for temporary absences, to live with Annie Holt

Kentwell until the present time; that on or about March 25, 1924, said Annie Holt Kentwell, purporting to act on behalf of said petitioner, employed the present attorneys of record for petitioner herein for the purpose of investigating the claims of the petitioner to said lands, as well as other claims of the petitioner; that said attorneys thereupon immediately proceeded to and did investigate said claims and on September 14, 1925, said attorneys stated in writing that they were ready for court action on behalf of said petitioner with respect to the claim of said petitioner to the lands described in the petition herein; that on or about the 22nd day of June, 1926, in further pursuance of the action theretofore taken by said Annie Holt Kentwell and said attorneys, the said Annie Holt Kentwell was appointed receiver for said petitioner Eliza R. P. Christian under the terms of the British Lunacy Act; that on February 1, 1927, said George Holt was appointed guardian of said petitioner Eliza R. P. Christian by the Circuit Court of the First Circuit, Territory of Hawaii; that for over two years after his appointment the said guardian allowed the respondent to continue to make, and the respondent did make, expenditures for permanent improvements upon the said land and that during all of such time said guardian made no effort to [535] disaffirm the said instrument or to notify the respondent with respect to any claim to said lands; that since the acquisition of title to said lands by

this respondent and before any assertion of any claim of a right to rescind the said instrument, now made for the first time by said second amended petition, this respondent has expended large sums for permanent improvements upon said lands amounting to more than the sum of $600,000; that said improvements have enhanced the value of said lands in at least the sum of $600,000, and that the value of said improvements to said lands is at the present time more than the said sum of $600,000; that many of the witnesses who were familiar with the circumstances surrounding the execution of said instrument and the participation therein of the petitioner and her representatives and the mental condition of the petitioner at the time of the execution of said deed and assignment and other facts bearing upon the right of the petitioner to obtain such cancellation, have died or become unable to testify; that of said witnesses, W. W. Goodale and W. A. Greenwell, who could also have testified with respect to the search of title by respondent corporation in 1910 and its desire to obtain all interests appearing of record affecting said one-third part of said lands, have died since the filing of the original petition herein; that by reason of the aforesaid facts and circumstances and the long and unreasonable delay which has occurred before petitioner attempted to disaffirm or have cancelled the said instrument, the third cause of action is barred.

And this respondent further alleges that each of the three causes of action set forth in the second

amended petition is barred by the statute of limitations and par- [536] ticularly by the provisions of Section 2639 Revised Laws of Hawaii, 1925.

WHEREFORE, this respondent prays:

FIRST, that the petitioner take nothing by this suit but that her petition be dismissed with costs to this respondent;

SECOND, that in any decree entered herein full and complete equity be done as between the parties to this suit.

Dated: Honolulu, T. H., this 24th day of December, 1931.

BROBECK, PHLEGER & HARRISON,
and
ROBERTSON & CASTLE,
By ALFRED L. CASTLE,
Attorneys for Respondent, Waialua Agricultural Company, Limited.

Served ~~Receipt of a copy of~~ the foregoing Answer ~~is hereby acknowledged~~ this 24th day of December, 1931, by leaving a copy at the office of

ULRICH and HITE,
Attorneys for Petitioner, and on
JOHN R. DESHA,

Attorney for James L. Holt, one of the Respondents, by leaving a copy at his office.

CHAS. M. AWANA. [537]

[Title of Court and Cause.]

REPLICATION OF PETITIONER TO ANSWER OF WAIALUA AGRICULTURAL COMPANY, LIMITED TO SECOND AMENDED PETITION.

Filed at 3:15 o'clock P.M., Jan. 4, 1932, John Lee Kwai, Clerk. [538]

Comes now ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. von HOLT, her guardian, and, reserving unto herself all manner of exceptions to and without waiving her right to take advantage of the manifold insufficiencies and errors in the answer of WAIALUA AGRICULTURAL COMPANY, LIMITED, respondent herein, to petitioner's second amended petition, by way of replication to said answer doth say:

Petitioner re-alleges, re-avers and re-asserts all of [539] the allegations contained and set forth in her second amended petition herein, and denies each and every, all and singular the allegations contained in the answer of said Waialua Agricultural Company, Limited, respondent, to said second amended petition, excepting such allegations in said answer contained as admit and are in affirmance of allegations contained in said second amended petition.

WHEREFORE IT IS PRAYED as in said second amended petition set forth.

Dated: Honolulu, T. H., January 4, 1932.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. von HOLT, her guardian,
By ULRICH & HITE,
By BARRY L. ULRICH,
Her Attorneys.

Certify served on Respondent Waialua Agricultural Co., Ltd. by mailing true copy in U. S. mail. Jan. 4, 1932. Addressed to its attorneys, ROBERTSON & CASTLE, Honolulu, T. H.

True copy also mailed same time and manner to respondent James L. Holt, his attorney being JOHN R. DESHA.

CHAS. M. HITE. [540]

[Title of Court and Cause.]

MOTION FOR COMMISSION TO TAKE DEPOSITIONS.

Filed at 9:50 o'clock A. M., Jan. 7, 1932. John Lee Kwai, Clerk. [541]

Comes now the WAIALUA AGRICULTURAL COMPANY, LIMITED, one of the respondents above named, and without waiving any of its objections heretofore made in the proceedings herein, including all objections, pleas or otherwise to the second amended petition herein, and moves that this Honorable Court do make and issue its order directing that a commission or commissions do issue from and out of this Court directed to any American Con-

sul or Consular Agent in England, and/or to any Commissioner of Oaths or any person authorized to administer oaths in England, and to any notary public in the City of New York, New York, authorizing and directing said American Consul or Consular Agent, or said Commissioner of Oaths or any person authorized to administer oaths in England and to any notary public in the City of New York, New York, acting as the Commissioners of this Court to summon and take the testimony upon oath of the following persons as witnesses herein, that is to say: [542]

Eliza R. P. Christian
159 Woodstock Road, Oxford, England;
Annie Holt Kentwell,
159 Woodstock Road, Oxford, England;
Dr. Cyril Burt,
London County Hospital, England;
Dr. Alfred Frank Tregold,
London, England;
Dr. Smith Ely Jeliffe,
Huletts Landing, Washington Co., New York;
Martin Alfred Baker,
care John Sainsbury Limited, London, England;
A. W. H. Taylor,
3 Woodstock Road, Oxford. England;
C. Goldsworthy,
25 Oakthorpe Road, Oxford, England;

Frank Hudson Jenkins,
Oxford, England;
Mrs. Frank Hudson Jenkins,
Oxford, England;
Bessie Alice White,
763 Romford Road, Manor Road, Manor Park, England;
Kate Nixey,
42 East Street, Stamford, England;
Sophia Pacey,
57 Hayfield Road, Oxford, England;

and any other witnesses who may be called by any party hereto on such reasonable notice as may be prescribed by this Court in its order directing that commissions issue, upon oral interrogatories to be propounded by the attorneys of the respective parties hereto; that the said named witnesses all reside out of the Territory of Hawaii; that said named witnesses are necessary and material witnesses and respondent can not safely go to trial without the testimony of said witnesses; that an examination of the said Eliza R. P. Christian, including her own testimony, is necessary and material for an intelligent consideration of the issues now presented under the second [543] amended petition herein, including both her mental condition and the facts and circumstances surrounding the execution of a certain lease dated March 17, 1905, Exhibit A-8 herein, and a certain deed and assignment dated August 31, 1906, Exhibit 2-G herein, and the performance of

the terms and conditions of said deed and assignment; that testimony of said Annie Holt Kentwell is necessary as showing the facts and circumstances surrounding said lease Exhibit A-8 and said deed and assignment Exhibit 2-G, and of the performance of the terms and conditions of said deed and assignment; that the other named witnesses will testify on behalf of this respondent, as to facts showing that said Eliza R. P. Christian was competent at the time to have executed that certain lease dated March 17, 1905, Exhibit A-8 herein, and that certain deed and assignment dated August 31, 1906, Exhibit 2-G herein;

That other witnesses who may be called by respondent herein, under authority of the Commissions to be issued hereunder, will testify as to like facts regarding the mental competency of said Eliza R. P. Christian, but that respondent is unable at this time to give further names of witnesses.

This motion is based upon all of the records and files herein, and upon the affidavit of Alfred L. Castle attached hereto and upon the affidavits of Alfred L. Castle and Ella Wight Stephens attached to the Motion for Commissions filed herein on November 18, 1931, and the counter-affidavit of Alfred L. Castle filed herein on December 24, 1931.

Dated, Honolulu, T. H., January 7, 1932.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

By BROBECK, PHLEGER & HARRISON and ROBERTSON & CASTLE, its attorneys,

By ALFRED L. CASTLE. [544]

AFFIDAVIT OF ALFRED L. CASTLE

Territory of Hawaii,
City and County of Honolulu—ss.

ALFRED L. CASTLE, being first duly sworn on oath deposes and says that he is a member of the firm of Robertson & Castle, one of the attorneys for respondent Waialua Agricultural Company, Limited, herein; that Eliza R. P. Christian was one of the parties to and executed a certain lease dated March 17, 1905, Exhibit A-8 herein, and was a party to a certain deed and assignment from herself to one Annie Holt Kentwell dated August 31, 1906, Exhibit 2-G herein; that said Annie Holt Kentwell was a party to said deed and assignment of August 31, 1906, and her interest in the lands in question in this proceeding was leased under said lease of March 17, 1905, and represented by the Hawaiian Realty & Maturity Company, Limited, a party to said lease; that in the former proceedings herein it was admitted that no relief from said lease could be obtained, nor was the said deed of August 31, 1906, mentioned anywhere in the pleadings, but both documents were offered in evidence by the petitioner, and received as valid documents; and that for the first time it is now sought to cancel said documents;

That the testimony of said Eliza R. P. Christian and that of Annie Holt Kentwell is necessary as showing the facts and circumstances surrounding the execution and delivery of said lease Exhibit A-8

and said deed assignment Exhibit 2-G, and the performance of the terms and conditions of said deed and assignment;

That the testimony of said Annie Holt Kentwell cannot [545] be safely taken on written deposition because as found by this Court and the Supreme Court of Hawaii said Annie Holt Kentwell is unreliable and has been discredited as a witness;

That affiant alleges from statements procured by affiant's representative in London, England, the following witnesses will testify in substance as follows:

Bessie Alice White, of 763 Romford Road, Manor Road, Manor Park, that she formerly lived at No. 29 Leckford Road, Oxford, where she kept a boarding house; that when John D. Holt, his daughter, Eliza Holt (as she knew said Eliza R. P. Christian), and the Kentwells first arrived in Oxford in 1909 they resided at her boarding house until they moved to 159 Woodstock Road; that during the whole period of their stay at 29 Leckford Road she never once observed anything wrong with Miss Holt; she is positive that Miss Holt well knew what she was doing; she (said Eliza R. P. Christian) was no fool and was capable of looking after herself and the children properly, waiting on them, attending to their wants, dressing them in the morning and putting them to bed, and was capable of keeping house for herself and her father, to whom she was devoted, and doing it properly; Mrs. Kentwell often sent Miss Holt out for errands, and she, said Bessie

Alice White, never heard of any complaint regarding money matters; she never saw Miss Holt in a temper, but on the other hand was jolly and laughing; she often discussed the topics of the day with Miss Holt and has often seen her sitting on the end of the bed reading.

Kate Nixey, 42 East Street, Stamford, that she went to work for Mrs. Kentwell shortly before Mrs. Kentwell's daughter Ailene was born; Miss Holt, as she knew Eliza R. P. Christian, was so happy when newspapers came from home; she would take [546] them to her father's room and she, said Kate Nixey, has seen Miss Holt reading them to her father; Miss Holt would say she had to write a letter for her father, and she, said Kate Nixey, has seen Miss Holt at a table writing; she went with Miss Holt to the Catholic Church when Miss Holt followed the prayers from the book, and she, Kate Nixey, watched Miss Holt and her book because she was not familiar with such service; Miss Holt told her she had been to a convent school, and often described things at her home in Hawaii, describing for instance such fruits as breadfruit, mangoes and water lemons; Miss Holt sang Hawaiian songs and would say that such were Hawaiian songs; Mrs. Kentwell would send Miss Holt out on errands, Miss Holt first writing out the list and reading it over to Mrs. Kentwell; Miss Holt would be given money for the purpose of such errands and would bring back the right change; that one day George Kentwell came

to visit and Miss Holt told her he was Lawrence Kentwell's brother;

That said Kate Nixey will testify as to entire normality in household duties, habits, affairs, ability to cook and do housework and the like;

Sophia Pacey, 57 Hayfield Road, Oxford, England, that she lives with her son at the foregoing address, who carries on business as a dairyman; that she has known Mrs. Christian as Miss Holt for the past seven years calling at the house for milk and butter, though she has not seen her for the past twelve months; that she has conversed with Mrs. Christian who told her she had been married but that her husband used to knock her about, which was the reason she left him; that she, said Mrs. Christian, had a girl at a home in Cowley Road, Oxford, (Nazareth Home); that Mrs. Christian stated she was very fond of the girl and called to see her; that Mrs. Christian used to bring her picture papers for her granddaughter which came from [547] Honolulu; that Mrs. Christian stated she had plenty of money where the papers came from, but couldn't have it yet; that when Mrs. Christian came for the milk and butter she always understood the money and counted the change when given her that she noticed Mrs. Christian's hands which showed she had done lots of hard work;

That affiant reaffirms his statements in his affidavit attached to a motion for commission to take depositions filed November 18, 1931 and in his counter-affidavit filed December 24, 1931.

ALFRED L. CASTLE.

Subscribed and sworn to before me this 7th day of January, 1932.

[Seal] ELSIE HIORTH,

Notary Public, First Judicial Circuit, Territory of Hawaii. [548]

NOTICE.

To ELIZA R. P. CHRISTIAN, an incompetent Person, by HERMAN V. von HOLT, her Guardian, and ULRICH & HITE, her attorneys, and

To JAMES L. HOLT, a respondent named herein, and to J. L. DESHA, his attorney:

Please take notice that the foregoing Motion will be presented to his Honorable A. M. Cristy, at his court room in the Judiciary Building at Honolulu, Friday, January 8, 1932, at the hour of 10:00 o'clock, A. M. or as soon thereafter as counsel will be heard.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

By BROBECK, PHLEGER & HARRISON and ROBERTSON & CASTLE, its attorneys,

By ALFRED L. CASTLE.

Receipt of a copy of the foregoing Motion is hereby acknowledged this 7th day of January, 1922.

ULRICH & HITE,

Attorneys for Petitioner.

JOHN R. DESHA,

Attorneys for James L. Holt, one of the Respondents. [549]

[Title of Court and Cause.]

Filed at 2:40 o'clock P. M., Jan. 15, 1932. John Lee Kwai, Clerk.

ANSWER OF ANNIE HOLT KENTWELL.

Comes now ANNIE HOLT KENTWELL, respondent above named, and, for answer to the second amended petition on file herein, shows unto this Honorable Court as follows:

I.

Referring to all of the allegations in said second amended petition contained which are the same as the allegations contained in the first amended petition herein, your respondent alleges that she did heretofore and on, to-wit, August 1, 1929, duly enter her appearance in the [550] above entitled cause, prior to the entry of any decree or judgment therein, and did submit to the jurisdiction of the Court in said cause upon the issues raised and presented by the allegations contained in said first amended petition, together with all other pleadings then in said cause, and did then and there undertake to be bound by such decision and judgment as might be entered in said cause, leaving petitioner herein to such proof as she had made or might make of and concerning the allegations of said first amended petition, and that thereafter upon such proof as petitioner did make of and concerning said allegations, and under the law in the premises, and upon facts duly found, the judgment and decree of this Court was duly

entered, and upon appeal therefrom by decision of the Supreme Court of the Territory of Hawaii, binding on your respondent in the premises, all matters of fact and law having to do with and bearing upon the question of the validity of that certain deed dated May 2, 1910, and concerning the mental incompetence and incapacity at all times of said Eliza R. P. Christian, were determined, and therefore your respondent at this time makes no further answer to any of said allegations in said second amended petition, which were likewise the allegations of said first amended petition, but herewith abides by her submission to the jurisdiction of the Court and abides by the decrees, orders and decisions which have been entered or may yet be entered herein upon proof heretofore adduced upon said first amended petition; but with respect to the allegations in said second amended petition contained which are different [551] from and in amendment of said amended petition and which new allegations have been introduced into said second amended petition in compliance with the order and direction of the Supreme Court of the Territory of Hawaii, and with the subsequent order of this Court, and which concern themselves with the validity as to petitioner of that certain lease dated March 17, 1905 and that certain written instrument dated August 31, 1906, your respondent answers and avers as follows:

II.

Answering the allegations contained in paragraph XXII of said second amended petition, your respondent admits the allegations in said paragraph contained, excepting the allegation to the effect that the respondent corporation, lessee named in said lease, at the time of the affixing of the signature of said mental incompetent to said lease had notice, actual or constructive, of the fact of said incompetence, and as to such allegation she leaves petitioner to her proof thereof, and further replying to the allegations in said paragraph contained, your respondent alleges that on March 17, 1905, and at the time of the affixing of the signature of said incompetent to said lease, as at all other times in her life, the said Eliza R. P. Christian was wholly and utterly incapable of understandingly engaging in the transaction of executing said lease as an assenting party thereto, or of engaging in any business transaction, and respondent further alleges that said mental incompetent was living with her at the time of the affixing of her signature to said lease, and [552] that she had lived with her, the respondent, almost continuously ever since said time, and that it is true, as in said paragraph alleged, that said Eliza R. P. Christian never received nor did anyone acting on her behalf ever receive any consideration whatever for the execution of said document, and, further, that she never received any rent from said respondent corporation pursuant to the provisions of

said lease or at all, and that said lease never became operative in any manner as to her, the said Eliza R. P. Christian.

III.

Answering the allegations contained in paragraph XXIII of said second amended petition, your respondent admits the allegations in said paragraph contained, and in this connection further particularly alleges as follows: That on August 31, 1906, as at all other times in her life, the said Eliza R. P. Christian was wholly and utterly mentally incompetent, and that she was incompetent mentally to have understandingly engaged in a transaction such as the execution of said indenture, or to have so engaged in any business transaction of any kind or character, and your respondent alleges that the fact of the mental incompetence of said Eliza R. P. Christian at the time of the execution of the said instrument of August 31, 1906 was well known to your respondent, as it was at all other times in her life, and that your respondent has never claimed and does not now claim any rights or interests of any kind by virtue of said indenture of August 31, 1906, and respondent further alleges that the said Eliza R. P. Christian received and has received no consideration of any kind for the execution [553] of said document, or for any purported transfer of rights or interests thereunder, and respondent further alleges that she, respondent, has at no time purported to transfer or convey any rights claimed by

her by virtue of said indenture of August 31, 1906 to James L. Holt or to the respondent Waialua Agricultural Company or to any other person, and that she has at no time received from said respondent or from any other person any consideration for any such purported transfer or conveyance, and respondent further alleges in this connection, that her joinder in that certain deed dated May 2, 1910 and the payment of the sum of $5,000.00 claimed to have been paid by respondent for and in consideration of such joinder, was made solely for the purpose, as was then well known to and understood by said respondent corporation, of conveying to said respondent corporation through James L. Holt such right as she might have in and to the life interest, or right to income accruing from the properties in question, of John Dominis Holt, the said John Dominis Holt's life estate or right to income having been at said time in part claimed by her, and respondent alleges that by virtue of the affixing of the signature of the said Eliza R. P. Christian to said indenture of August 31, 1906, said Eliza R. P. Christian being then well known to her, your respondent named as assignee therein, to be wholly and utterly mentally incompetent, no rights of any kind have ever passed to or vested in her, no rights or interests have ever at any time been claimed by her, and that she has at no time purported to convey or conveyed any such supposed rights or interest to any other person; that said mental incompetent has never received any benefit of any [554] kind by

virtue of the execution of said indenture; that such care or support as she, your respondent, may have given to the said incompetent, Eliza R. P. Christian, since the execution of said indenture of August 31, 1906, has been and was in no sense induced by the provisions of said indenture, and was in no sense furnished in compliance with or in performance of the conditions or provisions thereof, but was voluntarily furnished; that your respondent was not even aware of the terms and provisions of said instrument and of the nature thereof, until at or about the time that her evidence was taken under commission issued in the above entitled proceedings, notwithstanding that her signature to said instrument had been procured, as she believes, by her husband, Lawrence Kentwell, just prior to her departure from Hawaii in 1906 and without any knowledge or understanding on her part as to the real nature thereof; that she, the respondent, now claims no rights of any kind by virtue thereof, and that she, your respondent, submits to the jurisdiction of this Court for such judicial action as to the Court may seem just and proper, upon such evidence as has been or may be adduced herein, with respect to said instrument and with respect to any and all rights, interests or obligations arising in or having to do with your respondent, by virtue of the execution thereof, as such rights, interests or obligations may be determined by this Court.

IV.

Referring to the allegations contained in paragraph XXIV of said second amended petition having to do with the disaffirmance by petitioner, acting through her guardian, of her purported [555] assent to said lease of 1905, and her disaffirmance of said indenture of August 31, 1906, and concerning petitioner's offer to do full and complete equity in the premises as to the Court may seem just and proper, respondent leaves said allegations for the consideration of the Court and for such action with respect thereto as to the Court may seem just and proper, consistent with the facts and the law in the premises.

AND RESPONDENT makes no further or other answer herein, other than to aver that she does herewith submit herself to the jurisdiction of the Court herein fully in the premises, and does agree to be bound by such order or judgment as may be entered herein, and further does agree and offer to do full and complete equity in the premises as to the Court may seem just and proper.

Dated: London, England, Twenty-first December, 1931.

ANNIE HOLT KENTWELL.

Great Britain and Ireland,
London, England,
Consulate General of the United States of
America—ss.

ANNIE HOLT KENTWELL, being first duly sworn, on oath deposes and says: That she is the Annie Holt Kentwell named in and who signed the

foregoing Answer: that she has read the said Answer, knows the contents thereof, and that the allegations therein contained are true, excepting as to those matters therein alleged upon information and belief, and that as to them she believes them to be true.

ANNIE HOLT KENTWELL.

Subscribed and sworn to before me this 21st day of December, 1931.

[Seal] JOHN F. CLAFFEY,
Vice Consul of the United States of America at London, England.

(Fee Stamp)
Service No. 12665.
Fee $2—1210*d* [556]

[Title of Court and Cause.]

MOTION FOR COMMISSION TO TAKE DEPOSITION.

Filed at 10:46 o'clock A. M. Feb. 29, 1932. John Lee Kwai, Clerk.

Receipt of a copy acknowledged this 29th day of Feb. 1932.

ULRICH & HITE,
Attorneys for Petitioner. [557]

Comes now the WAIALUA AGRICULTURAL COMPANY, LIMITED one of the respondents above named, and without waiving any of its objections heretofore made in the proceedings herein, including all objections, pleas or otherwise to the second amended petition herein, and moves that this Honorable Court do make and issue its order directing that a commission or commissions do issue from and out of this Court directed to any American Consul or Consular Agent in England, and/or to any Commissioner of Oaths or any person authorized to administer oaths in England, authorizing and directing said American Consul or Consular Agent, or said Commissioner of Oaths or any person authorized to administer oaths in England, acting as the Commissioner of this Court to summon and take the testimony upon oath of the following persons as witnesses herein, that is to say: [558]

Mrs. Phyllis Colley,
16 St. Nicholas Street
Droitwich,
Birmingham, England,

and

Mr. Charles Richard Fox
Chief Constable,
City Police Station,
Oxford, England,

on such reasonable notice as may be prescribed by this Court in its order directing that commissions issue, upon oral interrogatories to be propounded

by the attorneys of the respective parties hereto or otherwise as the Court may direct; that the said named witnesses all reside out of the Territory of Hawaii; that said named witnesses are necessary and material witnesses and respondent can not safely go to trial without the testimony of said witnesses; that an examination of the said witnesses is necessary and material for an intelligent consideration of the issues now presented under the second amended petition herein; that the said named witnesses will testify on behalf of this respondent, as to facts showing that said Eliza R. P. Christian was competent at the time to have executed that certain lease dated March 17, 1905, Exhibit A-8 herein, and that certain deed and assignment dated August 31, 1906, Exhibit 2-G herein;

This motion is based upon all of the records and files herein, and upon the affidavit of Alfred L. Castle attached hereto, upon the affidavits of Alfred L. Castle and Ella Wight Stephens attached to the Motion for Commissions filed herein on November 18, 1931, the counter-affidavit of Alfred L. Castle filed herein on December 24, 1931 and upon the affidavit of Alfred L. Castle attached to the Motion for Commissions filed January 7, 1932.

Dated, Honolulu, T. H. Feb. 29, 1932.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
By BROBECK, PHLEGER & HARRISON and
ROBERTSON & CASTLE,
its attorneys.
By ALFRED L. CASTLE [559]

AFFIDAVIT OF ALFRED L. CASTLE.

Territory of Hawaii
City and County of Honolulu—ss.

ALFRED L. CASTLE, being first duly sworn on oath deposes and says that he is a member of the firm of Robertson & Castle, one of the attorneys for respondent Waialua Agricultural Company, Limited, herein; that Eliza R. P. Christian was one of the parties to and executed a certain lease dated March 17, 1905, Exhibit A-8 herein, and was a party to a certain deed and assignment from herself to one Annie Holt Kentwell dated August 31, 1906, Exhibit 2-G herein; that said Annie Holt Kentwell was a party to said deed and assignment of August 31, 1906, and her interest in the lands in question in this proceeding was leased under said lease of March 17, 1905, and represented by the Hawaiian Realty & Maturity Company, Limited, a party to said lease; that in the former proceedings herein it was admitted that no relief from said lease could be obtained, nor was the said deed of August 31, 1906, mentioned anywhere in the pleadings, but both documents were offered in evidence by the petitioner, and received as valid documents; and that for the first time it is now sought to cancel said documents.

That affiant alleges that subsequent to the filing of the Motion for Commission to take Depositions filed herein on January 7, 1932, statements have been procured by affiant's representatives in Lon-

don from the following witnesses who will testify in substance as follows:

Mrs. Phyllis Colley, 16 St. Nicholas Street, Droitwich, Birmingham, England. That she is an attendant at St. Andrew's Brine Baths, Droitwich; that she remembers Mrs. Eliza Christian [560] who had reclining baths during the month of October 1931; that she had the baths alone, but was often accompanied by a lady who witness did not know, who waited in the hall while Mrs. Christian had her baths; that she, Mrs. Phyllis Colley, used to talk to Mrs. Christian and Mrs. Christian with her. That witness looked upon Mrs. Christian as normal; that Mrs. Christian talked rationally about herself, her ailments and the weather, and never gave any impression of being other than a normal person. Witness remembers her because she was of a rather distinctive appearance, and unlike the usual type of patient at the baths. When Mrs. Christian left she thanked the witness for looking after her and said she was very much better. Mrs. Christian was away during one weekend and told witness that she had been to London on business, but did not describe the nature of the business.

Charles Richard Fox, Chief Constable, City Police Station, Oxford, England. That he is Chief Constable of Oxford with his office at the City Police Station, Oxford, England; that Mrs. Christian and Mrs. Kentwell appeared recently at the City Police Station at Oxford, England, where Mrs. Christian registered as an alien in connection with a passport proposed to be issued; that a Police Constable filled in the form on information

supplied by Mrs. Kentwell and Mrs. Christian; that Mrs. Kentwell questioned Mrs. Christian in the Constable's presence, and that Mrs. Christian gave perfectly intelligent answers to all questions, and that the form was signed by Mrs. Christian.

That affiant reaffirms the statements in his affidavits attached to the several motions for commissions to take Depositions heretofore filed in this cause.

ALFRED L. CASTLE

Subscribed and sworn to before me this 29 day of February, 1932.

[Seal] CHARLES Y. AWANA

Notary Public, First Judicial Circuit, Territory of Hawaii. [561]

[Title of Court and Cause.]

DECISION ON REMAND.

Filed at 8:50 o'clock a. m. Aug. 18, 1932. John Lee Kwai, Clerk. [562]

PRELIMINARY STATEMENT.

On May 9, 1928, Eliza R. P. Christian by her Guardian filed suit in Equity against Waialua Agricultural Company, Limited, and James L. Holt, praying cancellation and incidental relief as to a deed of May 2, 1910, which purported to convey in fee simple her contingent remainder of a one-third interest in the so-called Holt lands at Waialua, Oahu. (Said deed was, also, executed by her father,

John D. Holt, conveying his life interest; Annie Holt Kentwell conveying certain interests in said life estate and otherwise; but of the Thirty-Five Thousand ($35,000.00 Dollars paid for this [563] conveyance, Thirty Thousand ($30,000.00) Dollars has always been claimed as paid for Eliza Christian's expectancy). It was nominally a deed to James L. Holt, but he was simply an instrument in the securing of title by Waialua Company. During the same month (May 1910), James L. Holt and others conveyed an additional one-third (1/3) interest in fee to Waialua Company. Only Eliza Christian's interest in one-third (1/3) in remainder since April 10, 1922 is at stake herein.

After hearing before the same Judge presiding as at present, this Court filed a decision on May 11, 1929, finding that the Petitioner "HAS NEVER BEEN COMPETENT MENTALLY, TO EXECUTE A CONVEYANCE OF PROPERTY"; that she was NOT competent to execute the deed of May 2, 1910; that this proceeding was not barred by laches; that "the evidence does not clearly show that the Respondent, Waialua Company, knew of such mental incompetency"; that Lawrence Kentwell and the Respondent James Lawrence Holt did know of the incompetency; that James Lawrence Holt and another, WITH KNOWLEDGE OF WAIALUA COMPANY, handled the preliminary negotiations for the conveyance in question and obtained a secret profit therefrom; that "Waialua Company with knowl-

edge (of such secret profit) took over the control and completion of such negotiations"; and (among other things) that the [564] deed of May 2, 1910, should be cancelled.

On August 9, 1929, after supplemental hearing this Court further decreed an accounting of rents by way of reasonable compensation to the Petitioner for the use of her undivided interest in the lands in controversy from April 10, 1922, (the date when Petitioner's interest vested), to the date of final decree, less the consideration for the cancelled deed. (For further detail as to the original decisions, as to the mental incompeteney of the Petitioner and as to the basis of accounting, reference is specifically hereby made to the file of the decisions herein of May 11, 1929, and August 9, 1929, heretofore noted.)

Thereafter, an appeal was taken by the Respondent Waialua Agricultural Company, Limited, to the Supreme Court of the Territory of Hawaii. A decision was rendered by the Supreme Court on said appeal dated April 18, 1931, which decision is reported in 31 Hawaii, 817-912 inclusive. As a result of said decision and within the powers provided in Section 2511, Revised Laws of Hawaii 1925, an order was entered in the Appellate Court remanding said cause IN PART to the Circuit Court for further proceedings consistent with said opinion of April 18, 1931. The Circuit Judge was expressly instructed to permit suitable amendments

of the pleadings "to put in issue the validity of a certain lease dated March 17, 1905, being [565] Exhibit 'A-8' in said cause, INSOFAR AS IT MAY BE EFFECTED BY THE MENTAL CONDITION OF THE SAID ELIZA R. P. CHRISTIAN"; also amendments "to put in issue the validity of that certain instrument in writing of August 31, 1906, being Exhibit '2-G' in said cause insofar as it may be effected by the mental condition of the said Eliza R. P. Christian; and said Circuit Judge is further instructed to receive such further evidence as may be offered bearing upon or relating to any questions of fact AS TO WHICH FINDINGS OF FACT HAVE NOT HERETOFORE BEEN MADE BY THIS COURT, * * *". The Circuit Judge was further instructed "consistently with the conclusions of law and findings of fact to be made by said Circuit Judge not inconsistent with findings heretofore made by this Court, to determine the question of the validity of said lease of March 17, 1905, and of said instrument in writing of August 31, 1906, and the question of Petitioner's right to cancellation of said instruments herein"; and further to determine the question of rents and damages if any. The order of remand also specifically set out the terms on which the deed of May 2, 1910, should be cancelled.

Thereafter amendments to the pleadings were permitted seeking cancellation as to Petitioner, Eliza Christian, of said lease of 1905, and of said instrument of 1906, which amendments definitely in-

cluded Annie [566] Holt Kentwell as a party respondent. She, by answer, has submitted herself to the Court. Hearings were had in which it was ruled that the CONGENITAL IMBECILITY of Petitioner had been found heretofore both by this Court and the Supreme Court and would not be reopened. The only questions, amplified by the evidence, concerned the issue as to whether equity should grant affirmative relief to Eliza Christian against said instruments of 1905 and 1906.

THE DECISION OF THE SUPREME COURT. (31 Haw. 817)

In its decision the Supreme Court independently, (as it should be), reviewed the evidence as to the mental competency of Eliza Christian. THE EVIDENCE COVERED THE ENTIRE HISTORY OF ELIZA CHRISTIAN FROM HER BIRTH IN 1885 TO THE DATE OF THE HEARING IN 1929.

In reviewing the evidence affecting her mental condition immediately prior to 1905 (see pages 826-870), the decision states (page 870) "she was simple-minded". The decision goes on relative to the testimony bearing on her mental condition through the later periods of her life in connection with the earlier testimony and concludes that such testimony "tends so strongly to establish the fact that she (Eliza) was mentally impotent as to exclude any other reasonable hypothesis". [567]

On page 871, the decision continues: "The overwhelming weight of the evidence requires us to find, that on May 2, 1910, Eliza Christian was and at all times has been mentally incompetent to execute a deed or to understand its purpose or effect, or to engage in any business transaction of consequence. She was feeble-minded. Born in 1885, in May 1910 she had the mentality of a child of not more than five or six * * * she was utterly incapable of grasping the significance of a transaction involving the purchase or the sale of land or of valuing property or of determining the wisdom or lack of wisdom of making a sale. In short we find that at the date of the deed she was a congenital imbecile." (Underscoring ours.)

The Court then proceeded to determine the effect of mental incompetency on the part of the Grantor. The Court discussed the case of Dexter vs. Hall, 82 U. S. (15 Wall) 9, 20, 21, wherein the Supreme Court of the United States in comparing a lunatic with an infant said "but as a lunatic cannot avoid a contract, for want of mental capacity, he has no protection if his contract is only voidable." (pages 875-877.) The Territorial Supreme Court also indicated that if mental incompetency had been adjudicated in a proper proceeding before the execution [568] of the deed "we think there can be no doubt that the deed would be entirely void." (page 873).

The case of Luhrs vs. Hancock 181, U. S. 567, 574, was also discussed, without calling attention to the fact that it was not a suit brought by or for the alleged incompetent herself. It was also pointed out in discussing Kendall vs. Ewart 259 U. S. 139, 146, THAT THE GRANTEE'S PERSONAL KNOWLEDGE OF THE GRANTOR'S MENTAL DEFICIENCY IS CONSIDERED AS RENDERING THE CONVEYANCE, OBTAINED, VOID.

After some further discussion the decision of the local Supreme Court proceeded to adopt the rule that the deed of an insane person is not void but voidable. (page 882.) And then the Supreme Court proceeded to indicate the confusion arising in the law in attempting to apply this principle. (For comparison, reference is hereby made to the review of authorities in the decision of this Court of May 11, 1910, (1929) especially pp. 23-27 thereof.)

After a discussion of the equities involved, the Supreme Court of the Territory came to the conclusion that the DEED OF MAY 2, 1910, SHOULD BE CANCELLED so far as Eliza Christian was concerned, on the repayment or giving security by her of Thirty Thousand ($30,000.00) Dollars, of the consideration named therein WITH INTEREST. Then the question of rents [569] claimed by her for use and occupation since April 10, 1922, (date of her father's death), was considered.

This trial Court had originally granted damages by way of rent or for exclusive use and occupation by a co-tenant (Waialua Company) on the theory that the assent of Eliza Christian to the so-called "1905 lease" HAD BEEN ABANDONED IN FACT since the purchase of the other interests and attempted purchase of Eliza Christian's interest on May 2, 1910. (See decision of this Court, pg. 43, of May 11, 1929.) The Supreme Court remanded the cause to permit amendments and a direct attack against said "lease" as well as against the indenture of 1906 to Annie Kentwell purporting to assign rents.

Hence, the present questions are:

(1) Should Eliza Christian's signature to the 1906 indenture to Annie Kentwell stand so as to avail the Waialua Company in connection with its transactions of May 2, 1910, with Annie Kentwell, et al?

(2) Should a Court of Equity give relief to Eliza Christian in connection with her signature in assent to the 1905 lease?

(3) If affirmative relief be given in this proceeding against these two documents in [570] addition to the deed of May 2, 1910, what conditions in equitable adjustment should be imposed on the parties, if any?

THE INDENTURE OF AUGUST 31, 1906.
(Ex. 2-G, 1929 Hearing—
Ex. R-2, 1932 Hearing.)

This Indenture is by the Petitioner, Eliza R. P. Christian, to Annie Holt Kentwell, one of the Respondents herein. It recites that Annie Kentwell has been supporting Eliza Christian; that the latter, as the only child and heir of John Dominis Holt, is entitled to an expectancy in land at Waialua, leased to Waialua Agricultural Company by lease of March 17, 1905; that if Eliza Christian survives her father, John Dominis Holt, she will be entitled to rents reserved in the lease to the amount presently enjoyed by her father. By this indenture Eliza Christian purports to set over to Annie Kentwell, her heirs, executors and administrators all her (Eliza Christian's) "Title and interest in and to any and all rents, issues and profits to which she may hereafter be entitled or which may be due and payable to her by, thru or under the lease to the Waialua Agricultural Company, Limited, dated the 17th day of March 1905 * * * or by virtue of being the only child of John Dominis Holt, the Elder, a devisee under the will of R. W. Holt, deceased, together with all and every her right to demand, receive, [571] collect and receipt for all such rents, issues and profits from whomsoever due during the term of the natural life of her, the said Eliza R. P. Christian".

It was expressly agreed and understood that Annie Kentwell should support and maintain the said Eliza Christian for and during her natural life; and the HEIRS of Annie Kentwell WERE GIVEN THE RIGHT TO PERFORM the covenant and agreement on the part of Annie Kentwell to be kept and performed and to receive the benefits in connection with such performance. This indenture dated August 31, 1906, was recorded June 17, 1907.

Approach this indenture from (1) the fact that it is a personal contract between Annie Kentwell and Eliza Christian, with the privilege of performance by Annie Kentwell's heirs but no provision for other assignment nor is there any evidence that Waialua has ever sought to see to it that performance was had; from (2) the fact that Annie Kentwell transferred, (if it could be transferred) to James L. Holt, a purchaser with knowledge of its infirmity; (3) from the further standpoint that Eliza Christian has been found by this Court and the Supreme Court to have been a congenital imbecile; (4) from the further fact that the original [572] grantee, Annie Kentwell knew the facts as to her imbecility; (5) from the further facts that the Kentwells were in charge of Eliza's father through and for who they were receiving a stipend for his support by arrangement with James L. Holt and with John D. Holt himself, out of the life interest rents; (6) and from the further fact

that Waialua Company, in the 1910 transaction, with Annie Kentwell and James L. Holt, occupied no higher status than it did with Eliza Christian direct. The conclusion inevitably follows that Annie Kentwell got nothing by virtue of such a document from such a person. She took with knowledge of incompetency under a personal covenant. Waialua Company got no more thru Annie Kentwell and James L. Holt as to this phase than it got thru Eliza and James L. Holt direct.

That is, the May 2, 1910 transaction must always be considered with the fact that Waialua Company took over and completed, AS THEIR OWN, the negotiations of James Lawrence Holt to purchase outright Eliza's entire expectancy knowing and concealing a secret profit to James L. Holt and John L. Colburn, while these two, at the same time, knew of the mental condition of Eliza Christian. (See Decision of this Court of May 11, 1929.) Such facts [573] do not create any equities in favor of Waialua Company nor put it in the "bona fide purchaser" class, so as to prevent a Court of Equity from exercising AFFIRMATIVE POWER OF RELIEF to an incompetent against this indirect attempt to accomplish what has been refused directly by the cancellation of the deed of May 2, 1910, as to Eliza Christian.

Would it not be the height of absurdity for this Court to return to this imbecile the title to her land and then say that she should have no benefit from it during her lifetime because her void personal

indenture to her cousin sprang to life as a minor incident in the hands of a stranger to its covenants in connection with the same May 2, 1910 transaction as to which she must return Thirty Thousand ($30,000.00) Dollars with interest? If Waialua Company were to be given any consideration as to this document it would have more reason behind it in connection with refusing to give relief against the deed of 1910 itself. But, the fact is that Annie Kentwell got nothing by her attempt to deal with a known incompetent cousin and could therefore convey nothing from her. Nor can the Company justify indirectly what it could not justify directly. [574]

THE "LEASE" OF MARCH 17, 1905.

(Ex. A-8 in 1929 Hearing;
Ex. R-1 in 1932 Hearing)

(Underscoring ours.)*

1. TERMS OF LEASE:

Under date of March 17, 1905, Carlos A. Long "as administrator of the Estate of Robert William Holt, deceased, Robert L. Colburn; R. William Holt; George H. Holt, Edward S. Holt; Helen A. Holt, individually, and also in her capacity as Guardian of each and all of the minor children of

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*Printer's Note: Full capitals are used herein to denote underscoring in typewritten transcript of record.

James R. Holt, the Younger, Deceased,—said children being by name, Valentine S. Holt, Wattie R. Holt, Amelia A. Holt, Helen A. Holt, James R. Holt, and Irene N. Holt; Elizabeth K. Richardson, wife of Edward Vivian Richardson, and Hawaiian Realty and Maturity Company, Limited, an Hawaiian corporation, hereinafter NAMED THE LESSORS, parties of the first part; and—Waiahu Agricultural Company, Limited, an Hawaiian Corporation, party of the second part; AND—JOHN F. COLBURN, JAMES LAWRENCE HOLT, AND ELIZA R. P. CHRISTIAN, WIFE OF ALBERT CHRISTIAN, PARTIES OF THE THIRD PART;" all executed the document referred to in the pleadings and hearing as the "Lease of 1905", in the respective capacities hereinbefore quoted. This document expressly recites that nothing in said document shall be "construed to either limit, extend, or otherwise effect the real [575] title or interest in or to any of the lands or property herein described and demised as now existing in or on the part of any party or parties to this instrument". Then is recited for the purposes of the instrument, the agreed proportion of interest in each of the parties of the first part named as lessors as they should be construed to exist for the purposes of the instrument.

Then it is recited that "it has been agreed by the parties hereto, that SAID LESSORS SHALL DEMISE, and said PARTIES OF THE THIRD PART SHALL ASSENT TO THE DEMISE by

said Lessors, of said lands to said Lessee, for the term, and upon the covenants and condition hereinafter more particularly set forth". Then follows the provisions of the lease proper.

The Lessors (see recitation hereinabove) lease and demise unto the Lessee by particular description all of the Waialua lands, as to which Mrs. Christian's ultimate one-third (1/3d) interest is involved in this suit, for a term of twenty-five (25) years from April 1, 1905. The Lessee covenanted to pay a total rent of Nine Thousand ($9,000.00) Dollars per annum PLUS "taxes and other imposts, from year to year and from time to time COMMENCING with the levy and assessment IN AND FOR THE YEAR 1905" [576] which might be levied by any and every competent authority upon said land. Six Thousand ($6,000.00) Dollars of said gross rental was to be paid "to said administrator, and to his successor and successors in said trust, if any, and to his successor and successors in title, * * *". The balance of said rental was divided in specific sums for interests as set forth, none of which included specifically Eliza Christian. (The John D. Holt life interest in one-third (1/3d), as to which Eliza Christian's expectancy was to succeed, was included in the two-thirds (2/3ds) of the rent payable to the administrator.)

The Lessee further covenanted "to pay said Lessors respectively and their respective (?) heirs, executors, administrators and assigns, the actual aggregate sums hereinabove expressed as being pay-

able to them respectively". The Lessee further covenanted "with said Lessors, and to and with each of them, and to and with their respective successors in trust, heirs, executors, administrators and assigns, as the case may be * * *" that the Lessee AT THE END OR THE EARLIER TERMINATION of the term WOULD PEACEABLY DELIVER POSSESSION OF THE PREMISES "TOGETHER WITH ALL AND SINGULAR THE BUILDINGS AND IMPROVEMENTS THAT SHALL THEN BE UPON SAID DEMISED PREMISES * * * EXCEPT AS [577] the same, or any part thereof, shall, in the interval, be definitely partitioned between said Lessors and said Lessee, as owners thereof in fee". It was further provided "that said LESSEE SHALL NOT in any event BE PERMITTED TO DEMOLISH, DESTROY, OR REMOVE ANY PERMANENT IMPROVEMENTS of the general character of ditches, sluices, embankments, dams, runways, trestles, bridges, culverts, houses, fences, or other similar structures or excavations which shall be dug into, or built into or upon the earth, in a manner calculated and intended to be permanent, or which shall be built upon foundations or piers of cement, masonry, or other similarly durable and permanent foundations. But Provided Further that nothing herein contained shall operate to prevent the Lessee from making such changes and alterations in the improvements, and in the

method of development of the resources of the demised premises as it shall from time to time elect, and excepting perishable structures such as laborers houses and similar wooden buildings".

THE LESSORS AND THE PARTIES OF THE THIRD part covenants with the Lessee that while the Lessee paid rent including taxes and other imposts as provided and while the Lessee observed and performed all other conditions and covenants on the Lessee's [578] part to be observed and performed THAT THE LESSEE "SHALL PEACEABLY AND QUIETLY HOLD AND ENJOY THE USE AND POSSESSION OF SAID DEMISED PREMISES.

And it was further provided that IF THE LESSEE DEFAULTED IN THE PAYMENT OF RENT" to said Lessors, or to any or either of them, or their respective successors in trust, heirs, executors, administrators and assigns as the case may be * * * and further, if such failure or neglect to pay rent shall continue for and during ten (10) days after any installment thereof by the terms of this lease shall become and be due and payable", then the person concerning whom such default might exist might either in person or by agent make entry and terminate the lease according to the undivided portion so represented. Or such person either with or without entry MAY PROCEED IN ANY COURT to avoid, terminate and have forfeited this lease in the proportion effected. And any person acting in connection with such

forfeiture "shall be entitled to a restitution of th possession of such undivided (or divided, as th case may be) part, portion, and interest, of and i said demised premises as shall then belong an pertain to the person or persons so proceeding; o to the possession of which, he, she, it or they shal then be legally entitled". In the event [579] of suc forfeiture of said Lease it "shall be considered termination of this lease to the extent and for th purpose of thereupon absolutely terminating th right of said Lessee to demolish, impair, or re move from said premises, any of the fixtures, in cluding buildings, machinery, pumps, mills an milling, and (or) pumping plant which shall the be upon said premises,—THE INTENT THERE OF BEING TO EXPRESSLY NEGATIVE THI RIGHT OF SAID LESSEE AND ITS AS SIGNS, TO DEMOLISH, IMPAIR, OR RE MOVE SUCH FIXTURES, BUILDINGS MILLS, PUMPS, ETC., ETC., FROM SAI PREMISES DURING ANY INTERVAL THAT MAY ELAPSE, between such Declaration, Decre or Judgment of Forfeiture, and the date whereon final judgment concerning the same may or migh be obtained in any Appellate Court or Courts" It was further provided that the ten-day perio of default should not begin to run until demand was made at the office of the Lessee at Honolulu (Compare Ex. Ac-F and pp. 244-245 of Accountin Transcript under date of Aug. 1, 1929, as to de

mand of April 5, 1928, in connection with general offer in 1932 hearing.)

This lease was signed in behalf of the respective Lessors as recited and by the respective assenting third parties as recited: Eliza Christian's signature being as third party assenting to the lease. [580] The lease was recorded April 6, 1905.

2. WAIALUA COMPANY'S PURCHASE OF LESSOR'S INTEREST IN 1910:

In connection with this lease of 1905 it must also be borne in mind that on May 2, 1910 (the date of the deed which has been decreed to be set aside as to Eliza Christian) THE WAIALUA COMPANY WAS THE OWNER IN FEE SIMPLE of two-ninths (2/9ths) undivided interest in said land; James Lawrence Holt, thru and with John F. Colburn Trustee, claimed ownership of the LIFE INTERESTS of James R. Holt and John D. Holt in two-thirds (2/3ds) of said lands; James Lawrence Holt also owned in expectancy a remainder in fee in one-third (1/3d), which expectancy happened in favor of James Lawrence Holt by the death of James R. Holt on April 18, 1916; Annie Kentwell also claimed an interest in rents due for the John D. Holt life interest and was personally in charge of Eliza Christian. It should also be remembered that the deed of May 2, 1910, which has been ordered cancelled as to Eliza R. P. Christian, remains in full force and effect as a conveyance for the benefit of Waialua Company from the

other parties, to-wit: John D. Holt (father of Eliza), Annie Holt Kentwell and her husband, Lawrence K. Kentwell, and Albert Christian (husband of Eliza Christian). It should also be remembered that, by deed of May 28, [581] 1910, there was conveyed to and/or for the benefit of Waialua Company all the interest of James Lawrence Holt and John F. Colburn Trustee, together with a quitclaim from James R. Holt (father of James Lawrence Holt) together with releases of dower from respective wives.

THAT IS TO SAY, AT THE CONCLUSION OF THE CONVEYANCES OF MAY 1910, TO AND/OR FOR WAIALUA COMPANY, THE LATTER HAD ACQUIRED IN FEE SIMPLE, IN ADDITION TO ITS OWN TWO-NINTHS (2/9THS) INTEREST IN FEE, THE ENTIRE ONE-THIRD (1/3D) INTEREST IN FEE OF JAMES R. HOLT, JAMES LAWRENCE HOLT AND JOHN F. COLBURN TRUSTEE, TOGETHER WITH THE ONE-THIRD (1/3D) INTEREST FOR LIFE AS REPRESENTED BY JOHN D. HOLT'S SHARE, BOTH OF WHICH WERE INCLUDED IN THE 1905 LEASE IN THE RENTS PAYABLE TO JOHN F. COLBURN. In other words, all the original parties-lessors—in the 1905 lease, with the exception of less than a one-ninth (1/9th) interest, conveyed to or for Waialua Company in 1910. The Company thought it had, also, acquired Eliza Christian's interest, claiming that it had no suspicion of

any defect there until 1928. This should be borne in mind in connection with the argument that it then, (1910 onward), began to expand its extensive improvements "in reliance upon the lease". Eliza Christian's expectancy had nothing to do with the one-ninth (1/9th) [582] interest not obtained by the Waialua Company, but was contingent upon her surviving her father, John D. Holt who died April 10, 1922.

As to the "lease of 1905", this Court is proceeding upon the following findings on the whole record:

1. Eliza Christian was not an original party-lessor;

2. She was merely a party assenting to continued possession by the Waialua Company for such balance of the term of the lease as might remain, if and when her interest as heir to one-third (1/3d) of the Holt estate should vest on the death of her father;

3. Eliza Christian was at all times a congenital imbecile, incompetent to enter into a contract of such a character and was a resident of Honolulu in 1905;

4. Waialua Company, in 1905, is not shown to have had any knowledge of this incompetency;

5. Annie Kentwell, Lawrence Kentwell, James L. Holt and John Colburn did know of her incompetency, as did many others in Honolulu;

6. Waialua Company has had possession and use of the property for the full term of the lease;

7. Waialua Company has never paid Eliza Christian any consideration under sa lease, or [583] attempted to indicate what improvements were divisible at the termination of the lease, if the same were to stand;

8. In May 1910, Waialua Company bought out the interests of all the original LESSORS with the exception of a two-twenty-sevenths (2/27ths) interest (which latter had nothing to do with Eliza Christian's expectancy).

9. Also in May 1910, Waialua Company thought it had purchased Eliza Christian's expectancy, and in so doing took over and adopted the negotiations of James L. Holt, who knew of Eliza's incompetency, and granted said James L. Holt and John Colburn a secret profit on such purchase; (and paid Annie Kentwell for what?);

10. More than two-thirds (2/3ds) of the "improvements" made by the Company ON the Holt lands, were constructed after the Company had bought out the Lessors in May 1910, (more than one-third (1/3d) being made from 1926 on);

11. The improvements for unit operation of the sugar lands made *off* the Holt lands can be approximately 95% effective, regardless of Eliza Christian's "tenancy-in-common", were undistrubed during the term of the lease and still exist, subject to being dealt with in this suit;

12. The lease to Hawaiian Pineapple Company of [584] 1923, and prior pineapple leases, were made on the then assumption of Waialua Company

owning in fee simple twenty-five-twenty-sevenths (25/27th) of the Holt area, including Eliza Christian's one-third (1/3d) interest.

3. QUESTION OF CANCELLING ELIZA CHRISTIAN'S ASSENT TO LEASE:

The question in this hearing, therefore, in CONNECTION WITH THE SO-CALLED 1905 LEASE, is as to whether or not equity should affirmatively aid a congenital imbecile TO AVOID HER ASSENT IN 1905 TO THIS LEASE so as to entitle her to reasonable rental for the continued exclusive use by her co-tenant; or whether equity should merely enforce the proportionate rent under the lease, plus decreeing her right to a proportionate interest in improvements existing at its termination.

There is no evidence that any money consideration was ever paid to or for Eliza Christian's assent to this lease. There is no evidence that any rent for use after April 10, 1922, was ever tendered to Eliza Christian. She had no personal interest in taxes prior to 1922; and since that time ALL evidence as to reasonable rental value has been based upon values NET ABOVE TAXES.

If Eliza Christian, the imbecile, is to be [585] denied the relief of cancellation prayed for by reason merely of her assent to a covenant of quiet enjoyment, then she would be entitled, as proportionate successor lessor, not only to the proportionate rent under the lease from April 10, 1922,

to April 1, 1930, (one-third (1/3d) of the term on one-third (1/3d) of the Holt area), but she would also be entitled to consideration as to a claim for a proportionate interest in the improvements placed on the land prior to April 1, 1930, as well as rents since said April 1, 1930. (This might also involve the question of the improvements which have been abandoned, where the abandonment might not be clearly justified under the lease.)

In resisting the petition for cancellation of Eliza Christian's assent to the lease, the Waialua Company introduced detailed evidence as to the character of improvements made from time to time by Waialua Company ON THE THEORY OF UNITY OF PLANTATION DEVELOPMENT AND OPERATION over areas including both Holt and other lands. One of the largest items of plantation improvement made off the Holt areas, (except as to a main ditch and siphon carried across, the Holt areas now dividing the cane lands from the pineapple lands), was and is the Wahiawa Dam and Ditch. The Wahiawa Water Company a separate [586] corporation owned and controlled by Waialua Company, expended from the years 1902 to 1931 inclusive, (see Exhbits S-7 and S-8) upwards of a half million dollars in connection with its dam and spillway and the ditch TO THE BOUNDARY OF THE HOLT LANDS. This system of irrigation waters NOT ONLY affects the so-called Holt area below the ditch, but also su

stantially all other cane areas owned and controlled by Waialua Company.

It becomes pertinent in connection with the consideration of such an irrigation improvement to have in mind the total cane areas owned or controlled by the Waialua Company. The evidence showed that the entire sugar cane area owned and controlled by Waialua Company was 9,904 acres which included 1,622.95 acres of Holt lands used for cane, roads, etc., in connection with cane cultivation. The evidence showed that the entire Holt cane lands were only 15.5% of the total cane area of the Company. This would make the Eliza Christian interest (540.75 acres) represent approximately 5.4% of the total cane area, (9,904 acres). Hence it is a fair inference from all the testimony that the Wahiawa reservoir system, (and also all general plantation improvements not especially constructed for the Holt area itself), roughly speaking is 90% to 95% effective to the [587] Company exclusive of what should be done with Eliza Christian's contended rights; providing the connecting links are preserved to the Company.

(It might also be indicated here that the testimony shows that upwards of 11,000 acres of lands above the cane elevations, owned and controlled by Waialua Company, are leased for pineapple purposes. This includes upwards of 6,000 acres of Holt lands. It was computed at this last hearing, that Holt areas affected by pineapple leases were 55.7%

of the total area given over to pineapple cultivation; or ABOUT 18.5% OF THE TOTAL ACREAGE DEVOTED TO PINEAPPLES WOULD BE AFFECTED BY THE CLAIMS OF ELIZA CHRISTIAN. The computation in connection with the paid-up lease of Hawaiian Pineapple Company was slightly different, see August 1929 decision.)

By Exhibit S-5, the Respondents purport to show that improvements such as railroads, reservoirs, siphons, ditches, pumps, clearing, etc., were placed UPON THE GENERAL HOLT AREA under totals of original COST claimed by the Company as follows:

A. UNDER LEASE:

Prior to May 2, 1910 GROSS COST of improvements $182,525.07

[588]

B. AFTER BUYING OUT THE LESSORS:

1. From May 2, 1910 to Apr. 10, 1922 ..... $203,513.43
2. From Apr. 10, 1922 to Apr. 5, 1928 ..... 244,683.62
3. From Apr. 5, 1928 to Mar. 31, 1930 ..... 8,876.66
4. From Mar. 31, 1930 to Dec. 31, 1931 ..... 7,306.69

Making a grand total of $646,905.47

Of this gross, the Company shows under Exhibit S-6, that sundry improvements on the Holt land

have been abandoned FROM TIME TO TIME totaling Ninety-Three Thousand Four Hundred Sixty and 95/100 Dollars (93,460.95); (as to which only one-third (1/3d) of the abandonments actually necessary for releasing pineapple areas figured for one-third (1/3d) of the term would have even the most remote bearing on any present issue. Such factors belong to the issue as to profits of the Company, which respondents objected to entering upon.)

(In connection with the above totals, it may be of interest to note a claim included for cost of original clearing of land PRIOR to May 2, 1910, of Forty-Three Thousand Four Hundred Ninety-Three and 89/100 Dollars ($43,493.89), which was necessary in order to operate under the lease at all. Also prior to May 2, 1910, Thirty-Two Thousand Seven Hundred Fifty-Eight and 02/100 Dollars ($32,758.02) is claimed to have been spent on railroads on the Holt area; AND [589] THEREAFTER up to April 10, 1922, a sum of Fifty Thousand Six and 92/100 Dollars ($50,006.92) additional for such railroads,—a total of Eighty-Two Thousand Seven Hundred Sixty-Four and 94/100 Dollars ($82,764.94). Also in connection with pumps Nos. 10 and 10-A, improvements were made by the Company for well-irrigation and domestic water supply AFTER 1926 and before April 5, 1928, in excess of Two Hundred and Thirteen Thousand Dollars ($213,000.00), which are part of this grand total above. This

Court would hesitate to believe that the Respondents seriously contend that these last permanent improvements, finished less than two years before expiration of the lease term, were really made in reliance upon Elisa Christian's consent to peaceable enjoyment which would terminate in 1930 with a right to proportionate interest in such improvements. See testimony of Mr. Bischoff re locating this pump on FEE SIMPLE LAND.)

While on this subject let us go back to the above figures for a moment. Prior to May 2, 1910 (A PERIOD IN WHICH THERE WAS ONLY A LEASE), less than one-third (1/3d) of the alleged development improvements had been made. All of the improvements so listed were necessary to the Company in order to gain any operative return under the original lease. The [590] Company amortized most of these up to 1922 for purposes of obtaining tax reductions. After 1922 it considered itself fee-simple-owner, and so as to approximately two-thirds (2/3ds) of the Holt area.

In May, 1910, Waialua Company secured for itself a definitely assured position as to approximately two-thirds (2/3ds) interest in the Holt area, plus a life interest in the remaining third (the John D. Holt life estate). After being so assured, and between 1910 and 1922, additional development improvements were made amounting to a little less than one-third (1/3d) of the grand total. AFTER APRIL 10, 1922, more than a third of

the gross cost of internal development improvements of the Holt land was added; and this within a short time of the date for the termination of the original term of the 1905 lease.

It should be remembered, in connection with the claim of "reliance on the lease", that Eliza Christian's claims could only affect one-third (1/3d) of the Holt area for one-third (1/3d) of the term. Or, in other words, only one-ninth (1/9th) of the cost of such improvements, as could seriously BE CONTENDED TO HAVE BEEN MADE IN RELIANCE UPON THE LEASE, as against her claim for one-third [591] (1/3d) of the improvements existing at the termination of the lease, if the lease should be left uncancelled. Moreover as has been pointed out, the improvements which were made off the Holt area as part of the unified development of the plantation affected, a unified sugar area which can be approximately 95% effective, regardless of what should be done about Eliza Christian's claims in the instant case. See, Mr. Bischoff's estimate that about one-third (1/3d) of irrigation water was used on Holt lands, making about one-ninth (1/9th) referable to Eliza's interest for one-third (1/3d) the lease term.

It is not the intention of this Court to illustrate, by an examination in detail of every item of expenditure by Waialua Company, the difficulty which the Court has in inferring that the development of the Holt area AS A PART OF THE

PLANTATION really and in fact was based upon alleged reliance ON THE ASSENT OF ELIZA CHRISTIAN in 1905 as to a lease which was practically absorbed as to approximately two-thirds (2/3ds) fee simple interest in 1910, plus the acquisition of the life interest on the remaining one-third (1/3d), plus the attempted purchase of Eliza's own interest in fee. It is sufficient to add that an examination of the maps introduced as Exhibits S-3 and S-4 will show further [592] facts bearing upon the equities involved in this suit.

For instance, these maps show that the physical location of reservoirs on the Holt area are in the main so placed with other connecting main ditches that there should be no great difficulty, in a proper partition suit between tenants in common, based upon principles of equity which can be settled in this proceeding, that their existence could be substantially continued and maintained by the Waialua Company, much of this being usable in connection with the Wahiawa system. The intakes and five of the reservoirs in connection with the Helemano System are situate above the Wahiawa extension ditch so as to be available in connection with the system. Another reservoir known as Helemano 9-C, was built after May 2, 1910, at a cost of less than Three Thousand ($3,000.00) Dollars, and is situated on the NORTHERLY SIDE of Helemano Stream. It is used in connection with the 1926-1928 pump system, as well as to conserve unused

irrigation water flowing over higher levels between it and Helemano Reservoir No. 11. There are three other small reservoirs on the cane land south of Helemano Stream. All of these reservoir improvements are minor items in connection with a problem which a Court of Equity would have in hand in a question involving whether or not (1) a partition [593] in kind could preserve to the Company the sites of such improvements; or (2) if such sites were found to be "permanent" rather than "operative" improvements, whether an allowance should be made in case Eliza Christian as a cotenant were granted a partition which included such site or sites. Also, the question of preserving to Waialua Company a thru right-of-way for the Wahiawa extension ditch would be before such a Court in such a partition so as not only to preserve to the Company its present 95% effectiveness for the Wahiawa System itself, but also to preserve to the Company the major part of the Helemano development of irrigation water; thus leaving the whole irrigation system PRACTICAAL undisturbed, except as to utilizing the water on the 5% area represented by Eliza Christian's interest in sugar areas.

Similar observations as to adjustment are pertinent as to the Poamoho Pump developments. These improvements are so located on a separate parcel of Holt land as to yield to quite equitable treatment in connection with any partition. Also, in

view of the fact that this development came between approximately the years 1926-928, it is particularly within the reasoning of the Supreme Court in connection with its determination that the [594] deed of 1910 could be cancelled without any injustice, on the ground that the mutual equities of the co-tenants were completely protected by the laws applicable to personal allocation to the improving co-tenant in partition, IF AND WHEN the co-tenants might desire a severance of interests.

It could also be observed that the location of the main railroad system, so as to preserve a right-of-way which would preserve the essential unity of the present plantation, could and is adequately protected by the rules applicable to partition. This becomes more apparent by examining the actual location of such main railroad as disclosed on the maps. What would happen to the feeder or branch tracks would be dependent upon whether partition in kind could be had on the northerly side of Helemano Stream or should be looked for on the southerly side. (And in that connection, the evidence shows that the natural features of the whole area places about one-third (1/3d) of the Holt area north of the Helemano Stream and two-thirds (2/3ds) of the area south of Helemano Stream.) The disposition of camp sites, roads, etc., would depend upon the solution of "permanent" versus "operation" improvements in a like partition in kind, coupled with the question as to whether camps should be removable [595] or whether a cash

allowance after appraisal should be the method of adjustment. (In this connection, it is to be remembered that the 1905 lease itself contemplated that "laborers' houses and similar wooden buildings" were to be regarded as "perishable structures," thus showing the general classifiation.)

Right at this point it must be observed that the Respondents have attempted to insist that they be given complete equity in this suit. In the briefs they demand PARTITION in this suit in the event of cancellation. It is difficult to understand the bearing of such insistence in view of the fact that all parties requisite to a partition suit are not before this Court; nor are pleadings so framed as to permit of partition.

While Respondents' Attorneys' have repeatedly stated in their brief "give us complete equity", they still continue to insist that what has been attempted by cancelling the deed of May 2, 1910, and what is presently attempted in connection with cancelling the assent to the 1906 instrument and the lease of 1905 are basically all wrong. In this connection, is it a fair paraphrase of these contentions to say for the Respondent's attorneys: "If and when we (Waialua Company) get ready to do equity to Eliza Christian, a congenital imbecile, (altho not [596] admitting her imbecility until we have to), tell us now what we shall have to do when we can no longer avoid doing it."

Would it not be more in conformity with the principles of equity to confine the issues, (as the

Supreme Court has done), to the petition for cancellation, accounting to date, and the present settlement of equities incident thereto? If this be done, is it not also a well-settled principle of equity that performance of a decree on such issues will of necessity be part of the subject-matter before a Court of Equity if and when either co-tenant demands partition?

Suppose we examine this insistence by Respondents (that complete equity be done) from a different angle, in conformity with the pleadings actually before this Court. The term of the 1905 lease has in fact expired pending this case. The Waialua Company has in fact had possession and use of all the sugar areas in question and has collected rentals on pineapple areas, ON THE THEORY OF EXCLUSIVE OWNERSHIP. The issues really simmer down to the question: Shall the 1905 lease be somehow revived after the gap occurring by purchase of the life estate in 1910, and shall the Waialua Company be held accountable for proportionate rent net above taxes [597] under the lease, and subsequent thereto, and for a one-third (1/3d) interest in improvements on the Holt lands at the termination of the lease (April 1, 1930), or shall Waialua Company be confirmed in its right to personal allocation where possible as to permanent improvements and equitable adjustment in its favor as to the rest in the event of partition and merely account for reasonable value of exclusive